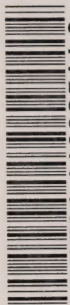


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Canada. Restrictive Trade
Practices Commission

Report concerning an alleged
combine in the manufacture,
distribution and sale of beer
in Canada



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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning an Alleged Combine in the Manufacture,
Distribution and Sale of Beer in Canada

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DEPARTMENT OF JUSTICE
OTTAWA

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EDMOND CLOUTIER, C.M.G., O.A., D.S.P.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1955.

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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

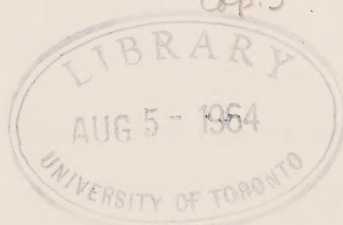
CONCERNING AN ALLEGED COMBINE IN THE
MANUFACTURE, DISTRIBUTION AND SALE
OF BEER IN CANADA

COMBINES INVESTIGATION ACT

Ottawa
1955

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RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

Guy Favreau, Q.C., B.A., LL.B. A. S. Whiteley, B.A., M.A.

RESTRICTIVE TRADE PRACTICES COMMISSION

Room 451, Justice Building,
Ottawa, May 16, 1955

Honourable Stuart S. Garson, Q.C.,
Minister of Justice,
Ottawa, Ontario.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with an alleged combine by way of merger, trust or monopoly in the manufacture, distribution and sale of beer in Canada.

The inquiry was initiated by the Commissioner of the Combines Investigation Act before the coming into force on November 1, 1952, of Chapter 39 of the Statutes of Canada, 1952, and the matter was brought before the Commission under the transitional provisions of the said Chapter 39, and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Combines Investigation Act as amended.


Argument was heard by the Commission at Ottawa in proceedings before the Chairman and Mr. Guy Favreau between October 25, 1954, and November 1, 1954, when Mr. Ian MacKeigan and Mr. J. J. Quinlan appeared on behalf of the Director of Investigation and Research, assisted by Mr. D. A. Rankin of the Director's staff, and Messrs. H. E. O'Donnell, Q.C., J. J. Robinette, Q.C., and D. A. McIntosh, Q.C., appeared on behalf of the parties mentioned in the Statement of Evidence.

This is the first case under the merger, trust or monopoly provisions of the legislation to come before the Commission.

Mr. A. S. Whiteley was not present during the argument and took no part in the preparation of this report.

Yours faithfully,

(Sgd.) C. R. Smith
Chairman



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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was begun by the Commissioner of the Combines Investigation Act in 1951. In June of that year reports appeared in the press relating to proposals made by Canadian Breweries Limited to acquire all of the stock of National Breweries Limited. Since these 2 Companies respectively occupied leading positions in the brewing industry in the Provinces of Ontario and Quebec, the Commissioner felt himself put upon inquiry to determine whether or not the contemplated amalgamation might be in contravention of Section 2(e) of the Combines Investigation Act. On June 27 and 28, he notified Canadian Breweries Limited and National Breweries Limited accordingly. After November 1, 1952, following the reorganization of the Combines Investigation Branch, the Director of Investigation and Research continued and completed the inquiry under the authority given him by the transitional provisions contained in Section 10(2) of Chapter 39 of the Statutes of Canada, 1952.

On February 2, 1954, the Director submitted a statement of the evidence obtained in the inquiry to this Commission, advising that in accordance with Section 18(1) of the Combines Investigation Act he was submitting copies of the Statement of Evidence to each of the parties against whom an allegation was made therein.

No parol evidence was adduced during the inquiry, the Statement of Evidence being based entirely on the documentary evidence obtained by the Commissioner or the Director.

2. Allegations

The Statement of Evidence contains the following allegations:

"ALLEGATIONS OF DETRIMENT

1.

It is alleged that, by reason of the facts set out in the previous sections, Canadian Breweries Limited constitutes a 'combine' by way of 'merger, trust or monopoly' contrary to the

Combines Investigation Act.

Section 32 of the Act makes it an offence to be a party to the formation or operation of a combine. 'Combine' is described in section 2 as including a 'merger, trust or monopoly' which has operated or is likely to operate to the detriment or against the interest of the public. 'Merger, trust or monopoly' is defined to mean one or more persons

- '(i) who has or have purchased, leased or otherwise acquired any control over or interest in the whole or part of the business of another, or
- (ii) who either substantially or completely control, throughout any particular area or district in Canada or throughout Canada the class or species of business in which he is or they are engaged,

2.

Canadian Breweries Limited falls under paragraph (i). The evidence describes how it has acquired control over or interest in the business of a large number of brewing concerns in Canada.

The Act does not contain a definition of what constitutes operation to the detriment or against the interest of the public. Any monopoly or quasi-monopoly has many economic, social and political consequences which, depending on the facts of the particular situation, may make its operation detrimental to the public. Among the more obvious of such consequences is the restriction of competition.

It appears from such authorities as the CONTAINER MATERIALS CASE^{*}, that the anti-combines legislation was passed for the protection of the specific public interest in free competition. Just as agreements, deliberately entered into, which tend to prevent or lessen competition unduly, are stamped with illegality under the legislation, so also are mergers, trusts and monopolies deliberately carried out, when they have the same tendency.

It has been the design and the effect of Canadian Breweries Limited to prevent or lessen competition in the brewing industry in the provinces of Ontario and Quebec and it has been its intent to prevent or lessen competition in the western provinces.

^{*} REX v. CONTAINER MATERIALS LIMITED et al (1940) 4 D.L.R. 293; (1941) 3 D.L.R. 145; (1942) 1 D.L.R. 529.

From the time of its incorporation in 1930 up to the present, Canadian Breweries Limited has acquired 23 brewing firms in the province of Ontario and one large brewing firm in the province of Quebec, which owned and operated 6 brewing plants in that province. In western Canada it has acquired a substantial stock interest in the brewing holding company which certain of its directors were instrumental in organizing and which has acquired control or ownership of 5 breweries and a substantial financial interest in 4 others.

As a result, Canadian Breweries Limited now controls businesses which, over the period 1949-1952 accounted for an average of 71.8 per cent of the capacity, 69.8 per cent of the production and 66.8 per cent of the sales in the province of Ontario; and 63.7 per cent of the capacity, 58.6 per cent of the production and 59.5 per cent of the sales in the provinces of Ontario and Quebec taken together. The control or influence of Canadian Breweries Limited extends to businesses that over the period 1949-1952 accounted for 50.5 per cent of the capacity, 48.3 per cent of the production and 48.6 per cent of the sales of the brewing industry in all Canada.

The design, from the outset, of Canadian Breweries Limited, has been to establish itself in a dominant and controlling position in the brewing industry in Ontario which would give it the power to regulate and control the policies and practices of the brewing industry in that province to its own ends. This design was extended, as early as 1942, to embrace the brewing industry in western Canada. In 1951 it was extended to the province of Quebec.

The execution of this design, which has continued up to the present time, has witnessed the progressive extinction of competitors in Ontario, the initiation of a similar course of action in western Canada and the absorption and elimination of a major competitor in the province of Quebec where the brewing industry was already subject to a very high degree of concentration.

Canadian Breweries Limited has achieved its objective of establishing itself in substantial control of the industry in Ontario and it envisages the further enhancement of that control through the acquisition of additional competitors.

While there has not been an extension directly of the operations of Canadian Breweries Limited to western Canada as originally planned, nevertheless the same result has been accomplished indirectly through the organization of Western Canada Breweries Limited which, today, is an affiliate of Canadian Breweries Limited. So far, the activities of Western Canada Breweries Limited are in their initiatory stages. The five brewing

firms, which it has already succeeded in absorbing, account for a substantial portion of the beer market in western Canada, in addition to the portion accounted for by the four other brewing firms in which it holds a substantial financial interest. Its operations are being directed by parties interested in Canadian Breweries Limited, whose intention it is to establish Western Canada Breweries Limited as the dominant firm in the brewing industry in western Canada.

By acquiring control of National Breweries Limited in the province of Quebec, Canadian Breweries Limited has reduced the principal competing suppliers of beer in that province from three to two in number and has brought about a situation which is only one step removed from a complete monopoly. It has also, thereby, enhanced further its position of control in Ontario and brought together and consolidated under one controlling agency two substantial segments of the brewing industry in central Canada where over 70 per cent of the beer market of the country is concentrated.

The acquisition of the plants of competitors has not been confined to those which were desired primarily for the purpose of assimilating them into the merger, but extended to plants which were desired primarily for the purpose of removing them as competitors, either because of the price competition, actual or potential which they presented, or to forestall their acquisition by other more robust competitors, existing or prospective.

Canadian Breweries Limited has strongly opposed price competition in the industry and made efforts from time to time to eliminate it by instituting agreements in respect of prices and other competitive practices and by threatening, and in at least one instance undertaking, local price wars to discipline price competing breweries and enforce its will upon the industry.

Freedom of entry into the brewing industry has been restricted by the policies pursued by Canadian Breweries Limited, including the policy of acquiring and closing out plants, of opposing the issue of new licences and in particular, by the basic policy of changing the whole structure of the industry in such a way as to make it increasingly difficult for persons without great capital resources to gain an entry.

In addition to the elimination of competition by eliminating competitors, it was also the design of Canadian Breweries Limited to prevent or lessen competition further by making arrangements with its remaining competitors for the division of business and the fixing of prices. As the position of Canadian Breweries Limited becomes more dominant it is likely, having regard to its expressed intentions, that efforts toward effecting such and similar agreements will be intensified and more probable of success.

By the elimination of many firms from the industry Canadian Breweries Limited has created a quasi-monopoly situation in which the likelihood of maintaining active competition, as opposed to express or tacit collaboration for eliminating competition is greatly lessened.

It was the design of Canadian Breweries Limited to use its position to influence public opinion and legislative policy in a direction which would favour the aggrandisement of the industry.

The policies of Canadian Breweries Limited have endangered the continued independence of the entire brewing industry in Canada, or large segments thereof, by creating a situation which is almost inevitably bound to give rise to public demand for government intervention on an increased scale.

Canadian Breweries Limited already holds a substantial degree of control, built up through the acquisition and elimination of competitors, in the largest and most important segment of the brewing industry in Canada, namely Ontario and Quebec, and a move to gain control of and dominate the brewing industry in western Canada is well established. The past history of Canadian Breweries Limited and the expressed views of those who direct its operations make it clear that further concentration of the industry by the acquiring of ownership or control over additional competitors by Canadian Breweries Limited is to be expected. While there may be a temporary interlude while Canadian Breweries Limited is assimilating National Breweries Limited, and otherwise consolidating its position in the province of Quebec, the move of Canadian Breweries Limited towards monopolization may be expected to continue with greater power and financial strength.

3.

Canadian Breweries Limited, by reason of the substantial control that it has acquired over the brewing industry in Canada; by reason of the manner in which such control was acquired; and by reason of the manner in which it has been exercised and is likely to be exercised; all as disclosed in the evidence; also falls under paragraph (ii) supra.

4.

It is alleged that E. P. Taylor, by reason of his activities disclosed in the evidence contained in the previous sections, is a party to the said combine."

The Statement of Evidence describes Mr. Taylor as having conceived the idea, about 1927, of promoting a merger in the brewing

industry in Southern Ontario and as having been active in that direction till 1930, in which year, in association with Mr. C. S. Jennison, he organized the company which subsequently was renamed Canadian Breweries Limited. Mr. Jennison died in 1931. The Statement of Evidence further states that Mr. Taylor has been a Director of Canadian Breweries Limited since its incorporation in 1930, President from that year until 1944, and Chairman of the Board of Directors since 1944.

3. Proceedings before the Commission

By order made March 3, 1954, under Section 18(2) of the Act, the Commission fixed Monday, October 4, 1954, at 10 a.m., in a Court Room of the Exchequer Court of Canada, Supreme Court Building, Ottawa, as the place, time and date at which argument in support of the Statement of Evidence might be submitted by or on behalf of the Director, and at which such persons against whom an allegation had been made in such statement would be allowed full opportunity to be heard in person or by counsel.

At the request of counsel for Canadian Breweries Limited and E. P. Taylor, the date of the hearing was set forward to October 25, 1954. The hearing lasted six days, ending in the late evening of Monday, November 1.

The following appearances were registered:

Ian MacKeigan, Esq.	)	Counsel for the Director of
J. J. Quinlan, Esq.,	)	Investigation and Research
D. A. Rankin, Esq.		of the staff of the Director of
		Investigation and Research
H. E. O'Donnell, Esq., Q.C.)	
John J. Robinette, Esq., Q.C.	)	Counsel for Canadian Breweries
D. A. McIntosh, Esq., Q.C.	)	Limited and E. P. Taylor

On behalf of the Director, Mr. MacKeigan filed documents supplementary to the Statement of Evidence.

4. Position on the Merits Taken by the Parties

The parties against whom allegations had been made in the Statement of Evidence had been notified in advance that they would be expected to state the position they were taking with respect thereto.

At the opening of the hearing the position taken on behalf of Canadian Breweries Limited and E. P. Taylor was stated by Mr. O'Donnell:

"The allegations of detriment are unfounded in law and in fact, both as against Canadian Breweries Limited and as against Mr. E. P. Taylor. Canadian Breweries Limited is not, within the meaning of the Combines Investigation Act, a combine or merger, trust or monopoly which has operated to the detriment or against the interests of the public, whether consumers, producers or others. Mr. E. P. Taylor has not been and is not a party to a combine within the meaning of the said Act.

The issue, in consequence, is on the allegations submitted by the Director in the form of an allegation of detriment, and in reply thereto evidence will be tendered in contradiction thereof and argument submitted, speaking to the fact that the acts, matters and things referred to in the statement of evidence, as well as others pertaining thereto, have not in any way operated nor are likely to operate to the detriment or against the interest of the public. On the contrary they have been entirely beneficial to the interest of the public, and the Commission will therefore be respectfully requested so to declare."

In support of this position, the following witnesses were called by counsel for Canadian Breweries Limited and E. P. Taylor:

James S. Jones, Toronto, Chief Inspector of Breweries and Brewers' Retail Stores in the Province of Ontario;
Robert W. Hillmer, Toronto, President and Managing Director of Brewers' Warehousing Company Limited;
George M. Black, Toronto, President, Canadian Breweries Limited;
Francis N. Ward, Toronto, Vice-President (Production), Canadian Breweries Limited;
E. P. Taylor, Toronto, Chairman of the Board of Directors, Canadian Breweries Limited;
Thomas G. Ferguson, Toronto, Vice-President (Engineering), Canadian Breweries Limited;
William D. McFarlane, Toronto, Director of Research, Canadian Breweries Limited;
J. Armand Desrochers, Montreal, Vice-President and General Manager, Dow Brewery Limited;
Wilfrid Gagnon, Montreal, President, Dow Brewery Limited.

At the suggestion of counsel for Canadian Breweries Limited and E. P. Taylor, the Commission visited the O'Keefe and Brading plants of Canadian Breweries Limited, in Ottawa, on the afternoon of Tuesday, October 26, 1954.

CHAPTER II

THE BREWING INDUSTRY IN CANADA

1. Nature of the Product

The term "beer" is generally used in a generic sense as applying to all malt liquor produced by fermentation. In the Excise Act, R.S.C. 1952, c. 99, s. 4(a), and in the Liquor Acts of the provinces, it is defined as meaning any beverage obtained by alcoholic fermentation of an "infusion of barley, malt and hops", or any similar products, in potable water, without distillation. According to returns made to the Director by the brewing companies, there are several types of beer, the main ones being ale, lager, stout and porter. Ale and lager are light brown in colour, ale being a somewhat heavier beer than lager, which is usually described as a light, dry beer. Stout and porter are dark brown in colour, and are heavier types of beer. Porter is the lighter of the two, being described as a weak form of stout. While beer of all these types is brewed mainly from malted barley, it may be made from almost any grain or cereal, e.g., rice, rye, wheat, corn.

2. Statistics of the Industry

From 1929 to 1933, the brewing industry in Canada experienced a considerable contraction in production and sales, by reason chiefly of the great economic depression which began about the end of 1929. Since then the industry's history has been one of almost continuous expansion. These statements are illustrated by the following figures:

Production (in millions of gallons)

	<u>Canada</u>	<u>Ontario</u>	<u>Quebec</u>
1929	62.0	15.3	30.7
1933	37.9	8.6	19.5
1953	213.2	84.1	69.7

(D.B.S. - Reports on the Brewing Industry,
1929-1953)

Per Capita Consumption (in gallons)

	<u>Canada</u>	<u>Ontario</u>	<u>Quebec</u>
1930	5.7	3.2	10.3
1933	3.7	2.1	6.4
1952	13.5	16.4	14.1

(Dominion Brewers' Association, "Facts on the Brewing Industry in Canada"; Dominion Brewers' Association Sales Bulletins; and annual reports of Ontario Liquor Control Board and Quebec Liquor Commission)

Since the date of the hearing the sales figures for 1953 for Canada as a whole and for Ontario and Quebec have been secured from the Dominion Bureau of Statistics, together with the Bureau's estimate of the population of those areas in the same year. Dividing the sales figures by the population figures gives the following picture of per capita consumption (in gallons):

	<u>Canada</u>	<u>Ontario</u>	<u>Quebec</u>
1953	14.0	16.8	15.0

At least for many years, Canada's per capita consumption has been well below that of the United Kingdom or the United States, though during recent years Canadian consumption has increased relatively to that of those countries.

There are about 60 breweries in Canada. The selling value at the factory of their output for 1952 was \$274,418,064, from which sales taxes and duties totalling \$113,259,031 were paid to the federal and provincial governments, leaving a net production value of \$161,159,033.

Of the 60 breweries, 47 under control of 9 corporate groups, accounted for about 75% of production and 13 independent companies produced the remaining 25%. Apart from the large Molson Company in Montreal, which is now erecting a second brewery in Toronto, the individually owned and operated breweries produced only about 5% of the total production in 1952.

3. Government Control

The operation and expansion of the industry has been subject to extensive government regulation, chiefly provincial. The impact of federal legislation has been felt mainly in the field of taxation.

Strictness of regulation has varied greatly from province to province. The legal position in certain provinces will be particularly considered in later chapters of this report, but two observations of the Director may be noted at this point.

Speaking of provincial government control over the number and location of distribution outlets and over advertising, the Statement of Evidence said:

"It is scarcely to be doubted that, in the absence of such controls, the industry would today rank higher on the list of Canadian industries in order of financial importance."

And, again:

" . . . the pricing of beer . . . is not carried on through the mechanism of the free market in any of the provinces, because of governmental regulation which varies from one province to the other. Because of this, the normal market forces which usually operate to determine the prices of other consumer goods are to a certain extent inoperative in the case of beer."

4. Geographical and Seasonal Aspects of the Industry

It is noted that in recent years about 70% of all beer sold in Canada has been sold in the large populous provinces of Ontario and Quebec. It is further noted that the peak season of demand for beer occurs during the warm months of the year, notably from May to August. There is a further peak in the month of December, followed by the low period of the year from January to March.

CHAPTER III

CANADIAN BREWERIES LIMITED: DEVELOPMENT IN ONTARIO

1. Recent History of the Brewing Industry in Ontario

Prior to 1916, there were over 40 breweries in Ontario, but many were closed during the period of the prohibition statute (The Ontario Temperance Act) from 1916 to 1927. The breweries that remained open could sell their product lawfully within the province only to the government, for resale in its dispensaries to citizens holding a prescription from a physician.

Apart from this statutory mode of purchase, beer was bought illegally from "bootleggers" or was made at home under the "home-brewing" system, permitted by the Excise Act of Canada, which allowed householders to brew beer on their premises for their own use.

There was one remaining lawful outlet for the breweries, the export of beer to the United States, where prohibition was also in force. Prior to 1930, such export was not forbidden by the federal laws of Canada.

The inevitable complications in the export trade came under investigation by a federal Royal Commission on Customs and Excise. It recommended that the federal government should sue a number of Ontario breweries for arrears of excise and sales taxes (see, e.g., *Carling v. The King* [1931] A.C. 435) and that federal legislation should be directed against the export traffic.

The Royal Commission's final report was dated October 15, 1927. This is the year in which prohibition came to an end in Ontario. The Liquor Control Act of 1927 allowed sale of beer, under government supervision, for consumption in the home.

The wider legislation resulted in a rush to invest in the brewing industry. The number of breweries producing for sale under the new system rose to 37 in Ontario and, in addition, the products of 5 outside breweries were sold in the province. The second annual report of the Liquor Control Board of Ontario, being for the year ending October 31, 1928, declared:

"the number of breweries . . . now authorized are . . . more than sufficient to cover the Ontario field and . . . no new undertakings should be incorporated either by Dominion or Provincial authority".

The Financial Post Survey of Corporate Securities for the year 1930 summarized the situation as follows (p. 235):

" . . .

In Ontario, the brewing industry is in a state of considerable chaos, due to over-expansion. When the Province of Ontario abolished prohibition and operated under a Liquor Control Act, practically all the old family breweries were taken over by new concerns, turned into publicly-controlled enterprises, and new plants and equipment put in, in many cases with capacities far in excess of those used in pre-war days. As a result, in 1928, there was over \$24,000,000 of capital invested in breweries in the province, which in that year produced products of a net value of \$11,700,000, as compared to the Province of Quebec where only \$20,000,000 was invested, and products of a net value of \$14,000,000 were produced.

Some attempts are now being made to clear up the situation by merging these small units, in order to save them from liquidation. Until this has been done, and the plants put on a more economical and satisfactory basis, the outlook will remain unsatisfactory.

. . ."

The over-expansion in production described above was aggravated by two factors operating to contract consumption. The stock market crash of October, 1929, was followed by the great economic depression of the 1930's. The export trade to the United States was rendered illegal by federal legislation: Statutes of Canada, 1930, c. 19. Export, in defiance of law, persisted in some degree from 1930 to 1933, but in the latter year the repeal of prohibition by the United States made the export business much less profitable.

From 1927 to 1934, therefore, the brewing industry in Ontario enjoyed the domestic market provided by sale of beer, under government control, for home consumption. On the other hand, it had to face the onset of the depression, over-capacity, the ban on the export trade and the substantial amount of home-brewing that persisted from the earlier period.

Since 1934, conditions, on the whole, have developed favourably for the industry. The Liquor Control Act amendments of 1934 extended the right to sell beer to hotels and, at about the same time, the economic depression became somewhat less acute. However, while sales increased in the years immediately following 1934, they failed to meet some of the more enthusiastic predictions. During the Second Great War, production was restricted under federal emergency legislation, but consumption increased and was equal to production at

all times. The Liquor Licence Act of 1946 introduced the cocktail bar to Ontario and widened the number of outlets. When the post-war depression, predicted in some quarters, failed to materialize, the beer industry shared in the resulting boom.

2. Activities of E. P. Taylor Preliminary to Incorporation of Canadian Breweries

In 1923, when he was 22 years old, Edward P. Taylor became a Director of Brading Breweries Limited, Ottawa, in which his maternal grandfather had purchased control from the Brading family. He continued to act as a Director of Brading's from 1927 to 1929, during which time he was first an employee and then a partner, in a firm of investment dealers at Toronto.

Late in 1929 and early in 1930, Mr. Taylor arranged a merger in which Brading's acquired control of Kuntz Brewery Limited at Waterloo, through an exchange of shares. This was the first brewery merger effected by Mr. Taylor.

Mr. Taylor's progress from the Kuntz merger to the formation of a new company, in collaboration with Clark S. Jennison, was later described by him in a letter to Mrs. Jennison under date of June 2, 1942:

"The actual story is that I conceived the idea of a merger of the breweries in Southern Ontario about 1927 and in 1929 I actually started work on it and merged the Kuntz and Brading Breweries and acquired options on the British American and Taylor and Bates breweries and was negotiating with Duncan Maclaren of Canada Bud for the inclusion of that Company.

It was during these conversations that Duncan Maclaren of Canada Bud introduced me to Clark who was negotiating with Doran and Mackey [Mackie] for the Northern Ontario breweries, of which Duncan was a shareholder. Clark and I had several good chats and I urged him to switch the English money which he had raised to my project because I felt that Southern Ontario was a better field and one in which it was not necessary to break the law in order to do business, as was the case in the North. Clark quickly saw my point and we joined forces and, as you know, worked very closely as fiscal agents of the Company until his lamentable death. The actual day to day operations of the business were from the outset in my hands as General Manager of the Company."

3. Incorporation, Purpose and Financing of Canadian Breweries

"Brewing Corporation of Ontario Limited" was the original name of the company now known as Canadian Breweries Limited, to which Letters Patent, with the powers of a holding company, were issued on March 8, 1930, under the Ontario Companies Act.

Supplementary Letters Patent, changing the name of the Company, were twice obtained:

- (1) On October 9, 1930, changing the name to "Brewing Corporation of Canada Ltd."
- (2) On April 21, 1937, changing it to "Canadian Breweries Limited".

By abbreviation of its present name, the Company was generally referred to in the Statement of Evidence and at the Hearing as "Canadian Breweries", and is so referred to in this report.

E. P. Taylor was President and General Manager of the Company from its incorporation and Clark S. Jennison was Chairman of the Board. Liaison with the United Kingdom investors, introduced by Mr. Jennison, was carried on through a group of the latter known as the "London Committee".

In 1930 a "Memorandum for London Committee on the affairs of Brewing Corporation of Canada Ltd." said that the Company was formed,

" . . . for the purpose of ultimately acquiring the ownership or control of a sufficient number of selected brewing corporations in the Province of Ontario to establish itself as a dominant factor in the brewing business within that Province".

The "London Committee" stood in a very important relation to the Company, not only because stock was sold in England as well as in Canada, but because the English investors were largely responsible for loans to the Company. Their holdings were largely liquidated during the Second Great War and from 1943 the Company sold its debentures in Canada.

4. Canadian Breweries: Acquisition of Other Companies

(a) Process of Acquisition

In the period 1930-53, Canadian Breweries acquired 23

brewing companies in Ontario. The most common method of gaining control was by exchange of shares, but in some instances shares or assets were bought for cash and in at least one case a mortgage was purchased and then foreclosed against the company under acquisition.

When 1 of the larger companies, O'Keefe's, was bought in 1934, Mr. Taylor stated, in a letter to W. T. Kernahan, dated May 2, 1934:

"I feel that the acquisition of the O'Keefe Company by us gives us the necessary power to bring about in a very short time, the elimination of the undesirable practices which have characterized the industry in Ontario in recent years. As you are well aware, the objective to which I have been working for the last four years has been one of bringing about in Ontario a similar situation to that which exists in the Province of Quebec, where the industry is virtually controlled by two companies. Our thought is to let John Labatt be the Molson of Ontario and that Brewing Corporation [Canadian Breweries] should be the National Breweries of Ontario. Ultimately twelve to fourteen plants should completely serve the province."

At that period, National Breweries Limited was much the larger of the 2 Quebec brewing companies, having been formed by the merger of some 15 Quebec breweries.

The 23 companies acquired by Canadian Breweries had each 1 plant, apart from Carling's of London which also had a bottling plant in Montreal. Of these 23 brewery plants acquired, 12 were closed and 11 remain in operation.

The record of the acquisition of these 23 Ontario breweries and the disposition thereof is shown in the following table:

<u>Brewing Concerns Acquired</u>	<u>Location</u>	<u>Year Control Acquired</u>	<u>Disposition of Plants Acquired</u>	<u>Name under which Each Concern is Presently Operating</u>
The Brading Breweries Limited	Ottawa, Ont.	1930	Still operating.	O'Keefe's Brewery (Ottawa) Limited
The Kuntz Brewery Limited	Waterloo, Ont.	1930	Still operating.	The Carling Breweries Limited Brading's Cincinnati Cream Brewery Limited
British American Brewing Company Limited	Windsor, Ont.	1930	Still operating.	
Taylor & Bate Limited	St. Catharines, Ont.	1930	Closed in 1936 and assets eventually sold.	
The Dominion Brewery Company Limited	Toronto, Ont.	1930	Closed in 1936 and sold to Victory Mills in 1944.	
Grant's Spring Brewery Company Limited	Hamilton, Ont.	1930	Closed in 1932 and assets sold in 1935.	
Regal Brewing Company Limited	Hamilton, Ont.	1930	Closed about 1938.	
Carling Breweries Limited	London, Ont.	1930	Closed in 1936 and assets eventually sold.	
Budweiser Brewing Company of Canada	Belleville, Ont.	1931	Closed in 1931 and assets eventually sold.	
Cosgrave Export Brewery Company Limited	Toronto, Ont.	1934	Still operating.	The Carling Breweries Limited (Toronto Division) O'Keefe's Brewing Company Limited (Victoria Street Division)
O'Keefe Brewing Company Limited	Toronto, Ont.	1934	Still operating.	
Welland Brewery Limited	Welland, Ont.	1934	Closed in 1934 and assets sold.	

Riverside Brewing Corporation Limited	Riverside, Ont.	1935	Closed in 1935 and assets sold.	O'Keefe's Brewing Company Limited (Simcoe Street Division)
The Reinhardt Brewery Company Limited	Toronto, Ont.	1936	Closed in 1949.	
Canada Bud Breweries Limited	Toronto, Ont.	1938	Still operating.	
City Club Breweries Limited	Toronto, Ont.	1938	Closed in 1938.	Brading Breweries Limited
The Hofer Brewing Company Limited	La Salle, Ont.	1939	Closed in 1939 and assets sold.	
The Capital Brewing Company Limited	Ottawa, Ont.	1944	Still operating.	
Bixel Brewing & Malting Company Limited	Brantford, Ont.	1944	Closed in 1944.	O'Keefe's Old Vienna Brewery Limited
Walkerville Brewery Limited	Walkerville, Ont.	1944	Still operating.	
Old Comrades Brewery Limited	Tecumseh, Ont.	1952	Still operating.	
Ranger Brewing Company Limited	Kitchener, Ont.	1953	Still operating.	The Carling Breweries Limited (Tecumseh Division)
Peller Brewing Company Limited	Hamilton, Ont.	1953	Still operating.	
				Dow Kingsbeer Brewery (1953) Limited
				Not known

Although 12 of 23 plants were closed down, improvements, particularly since the end of the war, in the remaining 11 have resulted in the productive capacity of the Company being almost tripled. Exhibit 23, filed by Canadian Breweries and giving a comparison of productive capacity, does not correspond exactly to the 23 plants acquired in Ontario, because it includes Frontenac, a plant acquired in Quebec, and leaves out 2 of those purchased in Ontario, viz., the Welland Brewery (which was closed) and the Ranger Brewery of Kitchener (which was transferred by Canadian Breweries to Dow Brewery Limited of Montreal). However, it is close to the full Ontario picture in that it shows the capacity for 11 Ontario plants that were closed plus 10 of the plants that remained in operation. The totals are

Capacity in the 1930's of 21 plants	1.140 million barrels
Capacity in 1954 of 10 plants	3.112 million barrels

To effect this improvement in the 10 plants, Canadian Breweries made capital expenditures on buildings and machinery of over \$30 millions.

Another result of the acquisitions was the disappearance of brands. The displaced brands include those made by the plants that were closed and those made by plants which were retained in operation, but turned over to the Brading, Carling or O'Keefe groups of subsidiary companies of Canadian Breweries.

Reference may be made at this point to the evidence given before the Commission by Mr. Black, the President of Canadian Breweries. Leaving out of consideration the case of Dow Brewery Limited, he stated that, for sales and administrative purposes, the 7 then wholly owned subsidiaries engaged in brewing operations formed 3 operating groups, Brading, Carling and O'Keefe, each one being operated as a unit under the name of the company hereunder first mentioned in each group:

<u>Name of Company</u>	<u>Location of Plants</u>
Brading Breweries Limited	Ottawa and Hamilton
Brading's Cincinnati Cream Brewery Limited	Windsor
The Carling Breweries Limited	Toronto, Waterloo and Tecumseh
The Carling Breweries (Quebec) Limited	Montreal
O'Keefe's Brewing Company Limited	Toronto (2 plants)
O'Keefe's Old Vienna Brewery Limited	Windsor
O'Keefe's Brewery (Ottawa) Limited	Ottawa

These 3 operating groups within Canadian Breweries produced 9 brands of beer in 1953, according to the annual report of the Company for the year.

Francis N. Ward, Vice-President of Canadian Breweries in Charge of Production, testified that, although these brands include the main varieties of beer - ale, lager, porter and stout - the 9 represent a drop in name brands from 38 which Canadian Breweries still had on the market when he joined the Company in 1934. The brewery names retained (Brading's, Carling's, O'Keefe's) are old family names.

The drop in name brands over the entire industry in Ontario was estimated by Mr. Taylor in a letter dated February 2, 1945:

" . . . we have reduced the number of brands from several hundred to only nine today . . ."

(b) Provincial Law in Relation to Acquisitions

The powers of the Liquor Control Board under the Liquor Control Act of Ontario during the period of these acquisitions did not include express authority to approve or disapprove of amalgamations among brewing companies. There is no requirement that a company proposing to acquire another must first approach the Board.

The Act does confer upon the Board the authority to grant to the brewing companies their licences to sell, and one section (now R.S.O. 1950, c. 210, s. 54) provides that the Board:

" . . . may for any cause that it deems sufficient, with or without any hearing, cancel or suspend any licence . . ."

James S. Jones, Chief Inspector of Retail Brewery Stores and Breweries under the Liquor Control Board, testified that the Board, under its authority to refuse or grant licences, "had to approve" of amalgamations and that he prepared a summary of these for the annual reports of the Board. Mr. Jones had no knowledge of any objection to the amalgamations by Canadian Breweries being submitted to the Board. He was prepared to assume that if the Board had seen fit to intervene, it could have stopped the amalgamations.

Mr. Taylor said he "always discussed" his "long-term plan" of amalgamations with a succession of Chief Commissioners of the Board, adding:

" . . . and at no time did any Chief Commissioner object to it. In fact, on many occasions, he would approve of it and sometimes express a wish that we could acquire one of these companies that was flagrantly breaking the law, so that his policing problems would be simpler."

5. Competitive Features Encountered by Canadian Breweries

(a) Provincial Law and System of Beer Distribution

The authority of the Liquor Control Board to control prices is now found in the Liquor Control Act, R.S.O. 1950, c. 210, s. 31(2) reading as follows:

"The Board may fix the prices at which the various classes, varieties and brands of liquor are sold, and, except in the case of beer, such prices shall be the same at all government stores".

The statutory exception in the case of beer has been applied by the Board only for the purpose of permitting a higher price in Northern Ontario, thus allowing for transportation costs in that area. Mr. Jones testified that the price to the public throughout Northern Ontario is the same and throughout Southern Ontario is the same, whether the beer is sold through the Ontario Liquor Control Board stores, the brewery retail stores attached to each brewery or the stores of Brewers' Warehousing Company Limited. The Brewers' Warehousing Company Limited is by far the most important of the 3 outlets for the sale of beer. It accounts for most of the sales to home consumers and for all the sales to licensees re-selling to the public through hotels, bars or restaurants.

This Company was incorporated on October 26, 1927, shortly after the repeal of prohibition, by the brewers of Ontario, after consultation with the Ontario government, to act as a central selling agency. It operates on a non-profit basis, financed by service charges paid by the breweries, proportionately to sales. The products of all brewers selling in Ontario are handled by the Company. Its distribution of beer is subject to supervision by the Liquor Control Board.

The Board of Directors is and apparently has been so constituted, by agreement among the shareholders, that no brewing company has majority control and none can obtain such control by acquiring other companies.

Mr. Hillmer, President and Managing Director of the Company testified that the Company sells to both home consumer and licensee at a price fixed by the Chief Commissioner of the Ontario Liquor Control Board. In the course of examination as to the control exercised by the Board over the prices charged by the Company, Mr. Hillmer was questioned as to what took place whenever the Company desired a change in prices. A review of his replies shows that the Company sought and obtained the approval of the Board on about half of the occasions between 1928 and 1948 and upon all of those since 1948.

The difference between the price of beer sold to the home consumer and that sold to licensees for resale to the public was

explained by Mr. Jones in this way:

"The price at which the beer is sold to the licensees is determined by the Brewers Warehousing Company Limited and it is calculated on the price approved by the Liquor Control Board for sale for home consumption less a percentage which is allowed to the licensee."

In addition to prices, advertising is a major factor in the sale of beer. Here again, control is vested in the Liquor Control Board which requires that all labels and all advertising be submitted for its approval, as well as the sites and plans for the breweries' retail stores.

During the 1930's, Ontario breweries were forbidden by the Liquor Control Board to engage in advertising. Mr. Taylor stated that at this time they had to compete with Quebec breweries which were allowed to publish, in Quebec, advertising matter which entered Ontario. Subsequently the Liquor Control Board permitted "institutional" advertising. Mr. George M. Black, President of Canadian Breweries, gave as an instance of this the "Carling Conservation Club", a campaign operated by the Carling group of Canadian Breweries subsidiaries since 1946. While brand advertising is not yet permitted, the institutional type of advertising permits the company to bring its name "before the people".

(b) Proposals of Canadian Breweries in Relation to Competition

(i) Proposals to Buy Up and Close Small Breweries.

Letters written by Mr. Taylor in 1932, show that as early as that year he proposed to other brewing companies that the large brewing concerns in Ontario should form a company or syndicate for the purpose of purchasing and closing small breweries which, because of financial difficulties or other reasons, might come on the market for sale. In one letter he said:

"When a small brewery fails, the situation can usually be controlled for a very small sum of money and if this was divided among five or six larger brewers, the contribution for any one would be almost insignificant."

At least one meeting of brewers was arranged by Mr. Taylor to further this project. Following the meeting he wrote, in another letter:

"I was very pleased to find the others at the meeting yesterday in such a receptive mood towards my proposal. There is no doubt in mind [sic] mind that if we could get started on cleaning up these small, but potentially dangerous situations, we would all benefit

in future years. It would indeed be desirable to include John Labatt, Walkerville, Ryans Breweries and Reinhardt if possible
... ."

A similar proposal was made in 1936. Apparently nothing came of either of them, probably because some of the brewing companies were not willing to co-operate.

(ii) Plans to Buy Hotels.

About the year 1934 Mr. Taylor and another director of Canadian Breweries formed a company named Mohawk Investments Limited to own, operate and rent hotels. Their purposes in so doing are shown by the documentary evidence to have been:

- (a) to provide a means of circumventing the difficulties arising from the newly revised Liquor Control Act which specified that no hotelkeeper could have brewery money invested in his property;
- (b) to purchase additional hotels other than those previously owned by some of the brewing subsidiaries of Canadian Breweries;*
- (c) to ensure that a substantial portion of the business of Canadian Breweries would be in friendly hands;
- (d) to run a hotel business profitable in itself.

Six hotels already controlled by Canadian Breweries were turned over to this new company and by April, 1935, the Mohawk Company owned a total of 12 hotels.

The whole plan was abandoned in the fall of 1935 when, as counsel for Canadian Breweries stated at the hearing:

"The evidence, you will remember, is that Canadian Breweries had that idea, and they did go into the hotel business for a bit until the Liquor Control Board said: 'We will not have that. You get out of the hotel business'."

* Several of the brewing companies acquired by Canadian Breweries owned hotels. These hotels, 6 in all, were sold by Canadian Breweries to a company, known as Saturn Investments Limited, which apparently had been formed for the purpose of taking over the hotels. Later the 6 hotels were acquired by Mohawk Investments Limited.

(iii) Proposals re Code of Ethics.

The directors of Brewers' Warehousing Company Limited adopted a "Code of Ethics" proposed by Mr. Taylor July 19, 1934, just after proclamation of the Liquor Control Act amendments authorizing sale of beer in hotels. This Code contained the following clauses:

- "1. That no brewer shall directly or indirectly make any concession to anyone, which would have the effect of reducing the price to the purchaser below the scale of prices set by Brewers' Warehousing Company, Limited.
2. That all salesmen employed by brewers shall be paid on a straight salary basis, plus reasonable travelling and entertaining expenses. No brewer shall compensate anyone other than a full time employee on a commission basis.
3. That no complimentary donations of beer shall be made and no brewer shall donate money to anyone or any organization for the purpose of purchasing beer.
4. That no brewer shall directly or indirectly make any gift or give any financial assistance to any brewery warehouseman or an employee of any brewery warehouseman.
5. That no brewer shall directly or indirectly or in any way make any gift or give any financial assistance or make any loan to anyone licensed to sell beer in Ontario or to any warehouse employee or Liquor Control Board employee, except the regular commission.
6. That no brewery or subsidiary company of such brewery shall directly or indirectly provide all or any part of any furniture, equipment, CO2 gas or anything else to anyone licensed to sell beer in Ontario.
7. That no gifts of money or goods shall be made by any brewer to anyone employed by holders of licenses to sell beer in Ontario.
8. That no brewer shall extend credit in any way whatsoever to any purchaser of beer.
9. That no brewer shall deliver to or compensate anyone for delivery to any person or premises selling beer in contravention of the Liquor Control Act.
10. That no brewery salesman shall deliver to any licensee from a brewery or brewery warehouse.

11. That no brewer shall advertise in any way except as provided by the Liquor Control Act of Ontario, or the regulations of the Liquor Control Board of Ontario.
12. That no brewer shall provide or distribute electrically illuminated signs of any description whatsoever.
13. That no brewer shall distribute any novelties of any description whatsoever, except bottle openers at a cost not exceeding \$20.00 per M.
14. That no brewer shall distribute any calendars or trays.

DEFINITION OF BREWER

The term 'brewer' refers to any brewing company or the officers, employees, agents or directors of any brewing company or a subsidiary company of such brewing company."

The principle of Clause 1 of this Code, forbidding concessions to hotel keepers, which would have the effect of lowering the price set by Brewers' Warehousing, was later made statutory in the Liquor Licence Act, 1946, and is now found in R.S.O. 1950, c. 221, s. 55.

The Statement of Evidence recites efforts by Mr. Taylor to police various breweries into obeying this Code, but only one instance of direct action is described in the Statement. This was in November, 1934, when a temporary and local reduction was made by British American, one of Mr. Taylor's companies, in the price of draught beer, to meet what Mr. Taylor described as unethical tactics used by the Walkerville Brewery Limited to get business and the "open price cutting by two Border Cities breweries". The evidence does not indicate how long British American continued selling at the reduced price level, or what results, if any, were attained.

In August, 1934, W. P. Renaud of the Huether brewery of Kitchener complained to a newspaper published in the Kitchener area that the affairs of Brewers' Warehousing Company Limited were dominated by large companies to the detriment of the small ones. He gave as an instance the disapproval, by Brewers' Warehousing, of the small one-eighth keg, after Huether's had developed a steel one-eighth keg, with permanent tapping equipment, which had been well received by the public, apparently because it enabled draught beer to be purchased in small quantities at a lower price than an equal amount of bottled beer.

An examination of the minutes of Brewers' Warehousing Company Limited for July 19, 1934, shows that a motion, eliminating the one-eighth keg from Brewers' Warehousing stores and restricting it to the retail stores of the breweries producing it, was proposed by the representative of the Walkerville Brewery, with which Mr. Taylor was

to have, in November of the same year, the "price war" already described. The motion was seconded by Mr. Taylor. It carried, with the support of all the larger companies present, including John Labatt Limited and Molson's (Ontario) Limited.

In 1939, Mr. Taylor made two unsuccessful proposals, one in the field of distribution and one in the field of prices. His proposal of a "packie bottle" a non-returnable and non-refillable container for the home consumption trade, failed to obtain support from the directors of Brewers' Warehousing and was thereupon disapproved by the Liquor Control Board.

Prices were reviewed in November, 1939, in view of tax increases imposed after the outbreak of war. Mr. Taylor's suggestion that the increased tax be absorbed by the brewers was rejected by the directors of Brewers' Warehousing and the consequent increase in price was approved by the Liquor Control Board.

A more successful episode occurred in 1941, when Canadian Breweries and other Ontario companies faced the problem of price rebates being granted by a brewery from Quebec Province. D. C. Betts, Vice-President, Canadian Breweries, joined forces with John Ryan of the Soo Falls Brewing Company Limited, Sault Ste. Marie, to induce National Breweries Limited of Montreal to forego rebates in Ontario, and an understanding to this effect was reached.

Mr. Taylor testified that, as the price in Ontario was fixed by the Brewers' Warehousing Company Limited, with the approval of the Liquor Control Board, rebates were against the law and that the understanding with National Breweries brought the latter into line with Ontario law.

In 1945, the breweries selling beer in Ontario formed the Ontario Brewers' Association, to take over from Brewers' Warehousing Company Limited functions other than the regular merchandising and marketing operations. The Association instituted a "Fair Trade Agreement" in 1947. This agreement was similar to one prevailing in Quebec and was, in fact, drafted after the terms of another agreement in use in the Maritime Provinces. In forwarding the draft agreement to the Association, its solicitor wrote that in preparing it he had followed the agreement in force in the Maritime Provinces, to which Canadian Breweries, Labatt's, National Breweries and Molson's were also parties. These Companies were also the parties to the Quebec Agreement.

The Ontario Agreement, executed after discussion of preliminary drafts, contained the usual covenants not to seek sales through concessions to licensees by, e.g.:

loans and guarantees	clause	3
having an interest in		
retail outlets	"	4
tied houses	"	5
allowances and rebates	"	6
free samples	"	7
"treating"	"	8

These clauses are similar to those in all agreements and codes of this nature proposed in the brewing industry over the years and coincide, for the most part, with the rules obtaining in the Ontario beer industry, under the Act, the regulations and the rulings of the Liquor Control Board.

The 1947 Agreement recites that the "parties have no desire to infringe in any way upon the provisions of Section 498A of the Criminal Code and/or of the Combines Investigation Act of the Dominion of Canada". The Combines Investigation Act had been mentioned at least once before. That was in 1939, when Mr. Taylor failed in his opposition to the price increase recommended by Brewers' Warehousing and approved by the Liquor Control Board. He then took the opinion of counsel on the position of Brewers' Warehousing Company Limited under the federal Act. There is no evidence that Mr. Taylor took any action under the Act at that time, but the matter arose again in 1950. The "baby budget" introduced by the federal government in September of that year included increases in the excise tax on malt and in corporation income tax. The Ontario Brewers' Association unanimously requested an increase in beer prices, which was approved by the Liquor Control Board, September 16. The President of the Toronto Hotel Proprietors Association issued a statement that Canadian Breweries were behind the increase. He intimated that a boycott would be imposed on their products.

Canadian Breweries blamed a competitor for spreading the rumour of its responsibility for the price increase. The Company resigned its membership in the Ontario Brewers' Association and proposed to announce reductions in price. Discussions dragged on, through the medium of the Ontario Hotel Association, but on November 4, Canadian Breweries advised Brewers' Warehousing that from that day the net prices to licensees were reduced by Brading's, Carling's and O'Keefe's.

Mr. Taylor's attitude at this time was expressed in a letter which he wrote November 1, after an interview with the Premier of Ontario:

"I told the Prime Minister that if the matter was not settled this week, our Company would have to engage in a price war to regain our position and put our competitors either out of business or make them so groggy that they will behave."

The question then arose as to what action would be taken by Brewers' Warehousing Company Limited with reference to the unilateral action of Canadian Breweries. Brewers' Warehousing consulted its solicitor and the solicitor had a telephone call from counsel for Canadian Breweries, who raised the question of the Combines Investigation Act. The solicitor for Brewers' Warehousing advised his client that its actions to date had been lawful but concluded: "The minute, however, that the Brewers' Warehousing Company Limited or any of the brewers conspire to prevent any brewer from reducing his prices they run foul of the Criminal Code and of The Combines Investigation Act."

The directors of Brewers' Warehousing, at their meeting of November 8, accepted the above opinion, and in accordance with the decision of his directors, R. W. Hillmer, President of Brewers' Warehousing, wrote the Chief Commissioner, Liquor Control Board, on November 10:

- (1) Confirming instructions received from the Chief Commissioner that "the price established September 18th was a maximum" and that if any brewer proposed a lesser price there would be no interference by the Liquor Control Board.
- (2) Advising that the reduced prices announced by "individual brewers" had been accepted by the Board of Directors of Brewers' Warehousing Company Limited.

Mr. Hillmer's letter of November 10 referred to the reduced prices of "individual brewers". The minutes of November 8 had said notification was received from "two brewers". All brewers must have decided to join the reductions, because all are named in a telegram sent by Mr. Hillmer on November 8 to the brewers' retail stores, announcing the reductions.

In his testimony before this Commission, Mr. Hillmer stated that the price approved by the Liquor Control Board had been "a fixed price", except for this occasion in 1950, when the expression "maximum price" was used for the only time in his recollection.

6. Integration with the Malting Field

The Statement of Evidence and the testimony of Canadian Breweries officials at the hearing establish that the Company has acquired complete ownership of Dominion Malting Company Limited, 1 of the 2 malting companies furnishing malt to the beer industry in Canada, and has built a second plant, Victory Mills, which produces malt and other products. In 1946 Canada Malting Company Limited, the larger of the 2 Canadian malting companies, refused to supply any

more malt to Canadian Breweries, which fact caused Canadian Breweries to push through the acquisition of Dominion Malting Company Limited as the only available means of securing adequate supplies of malt. Canada Malting Company Limited is evidently in a position to meet the requirements of Canadian Breweries' competitors. There is no suggestion that Canadian Breweries has a monopoly on malt or that its competitors have been hampered in their access to this product.

CHAPTER IV

CANADIAN BREWERIES LIMITED: EXTENSION TO QUEBEC

1. History of National Breweries Limited

National Breweries Limited, incorporated as a holding company in 1909, merged 14 breweries in the Province of Quebec, closed 10 and kept 4 in operation. It bought 2 more by 1948 to raise its total to 6. The only remaining producing competitor within the province was Molson's Brewery Limited, Montreal. For many years National Breweries supplied from 60% to 70% of the beer made in the Province of Quebec.

During the Second Great War, there was a "seller's market" but, by the time supplies again became plentiful, Molson's ale, lightened to meet a changing public taste, began to gain ground rapidly at the expense of National, which had for its principal brand Dawes "Black Horse", a "heavy, hoppy ale". A sharp drop in sales from 1948 to 1949 led to suggestions within the management of National Breweries Limited that the number of plants be reduced. In 1951, 2 were closed and a third was put up for sale. Net profits had dropped from \$3 millions in 1948 to \$825 thousands in 1951.

The following sales figures, 1949-1951, show the continued rise of Molson's, at the expense of National, and the extent to which the major Ontario companies, Canadian Breweries and Labatt's, shared in the Quebec market:

	<u>Percentage of Quebec Sales</u>	
	<u>1949</u>	<u>1951</u>
National	45.9	34.3
Molson's	40.0	50.5
Canadian Breweries	11.7	12.8
Labatt's	1.8	2.3
Others	<u>0.6</u>	<u>0.1</u>
	100	100

2. Acquisition of National Breweries Limited by Canadian Breweries

On purchasing Carling's of London, Ontario, in 1930, Canadian Breweries had obtained a bottling plant in Montreal which was

continued in operation, even though in many years its business was not profitable.

In 1950, Canadian Breweries decided that construction of productive facilities in Quebec would be more economical than paying freight on beer from Ontario. Land was purchased outside Montreal and plans were drafted by the engineering department of Canadian Breweries. Steel supply was held up by the 1950 defence program and meanwhile, Wilfrid Gagnon of Montreal, a director of Canadian Breweries, suggested to Mr. Taylor that it was unnecessary to build more brewing capacity, since National Breweries was operating below capacity and might be acquired. Mr. Taylor knew that National was in trouble and entered into discussions with its President, Norman Dawes, in 1951. A share exchange proposal of purchase was made towards the end of May of that year.

A document, found in Canadian Breweries' files and dated April 9, 1951, weighed the advantages and disadvantages of the acquisition of National by Canadian Breweries:

"CONFIDENTIAL

NATIONAL BREWERIES LIMITED

Advantages and Disadvantages of Acquiring Control

Disadvantages

1. It would make Canadian Breweries extremely large and possibly more vulnerable to Molson's and Labatts in Ontario -- to make a good showing on a combined basis, existing 60% of Ontario business would have to be held, and existing 45% of Quebec business would have to be built up to 60%.
2. A temporary disadvantage would be that National's sales volume would probably decline further for at least another year.
3. Multiplicity of brands.

Advantages

1. A competitor would be eliminated, both in Ontario and Quebec, and there would only be three major firms in the industry, instead of four.
2. The Company would cease to be considered as being predominantly an Ontario company.
3. It would be unnecessary to build a brewery in Quebec.

4. Existing National brands could be reduced to two or three, thus helping present C.B.L. brands.
5. Two or three plants could be closed and dismantled.
6. C.B.L. with National would control virtually all existing surplus capacity in Ontario and Quebec, which might be very valuable if the Defence Production programme extends for two or three years.
7. Multiplicity of brands."X

When Mr. Taylor was questioned about this document at the hearings, he said it was "not for any special distribution. It was just to think about this problem, for my own purposes."

The Directors of National Breweries Limited rejected the share exchange offer of Canadian Breweries on June 5, 1951. Canadian Breweries then made the offer in a modified form direct to the National shareholders. The offer made necessary an increase in Canadian Breweries stock, which the Company's shareholders approved.

While the campaign went on, National carried out its decision to sell the third of the 3 breweries previously marked for disposal. This was Frontenac Breweries Limited, of Montreal, which was sold to Canadian Breweries in October, 1951. Labatt's Brewery was in competition with Canadian Breweries on this occasion, offering \$3.4 millions for this brewery but Canadian Breweries topped this with an offer of \$3.74 millions, which was accepted.

According to the Statement of Evidence, the end of the struggle for control of National Breweries Limited came at the annual meeting of the shareholders of the Company held on March 19, 1952, when an entirely new Board of Directors and 2 senior executive officials were appointed on behalf of E. P. Taylor and his associates. Wilfrid Gagnon, of Montreal, was elected Chairman and President; J. Armand Desrochers, also of Montreal, was appointed Vice-President and General Manager; Mr. Taylor was elected a Director. For all practical purposes control of National Breweries was acquired at this time.

At the hearings, this report of the meeting was described as "correct" by Mr. Taylor.

At a special general meeting of May 12, 1952, the shareholders of National Breweries Limited approved a change in the Company's name to "Dow Brewery Limited".

The new directors and officers of Dow Brewery Limited then applied themselves to the disposal of plants and brands.

Brands were reduced from 9 to 4. Of the 5 plants remaining as the property of Dow Brewery, 2 had been shut down in 1951, viz., Dawes Draught Ale, Montreal, and Champlain, Quebec. These were sold, subject to the condition that they should not be used as brewing plants. That left 3; the original Dow Brewery in Montreal, Dawes Black Horse, also in Montreal and Boswell, in Quebec City.

The Dow Brewery was the centre of attention under the new management. Engineering and production experts from Canadian Breweries were brought in to inspect the Dow plant and after their survey, \$1 million was spent on purchase and repair of equipment.

After further consideration, the Board approved a construction program for the Dow Brewery to cost \$9 millions, from 1953 to the spring of 1955. Mr. Desrochers recommended to the Board that on completion of construction at Dow, the Dawes Black Horse Brewery should be closed. The commitment of \$9 millions was made by the directors of Dow after they had suspended payment of dividends in April, 1952, in view of losses incurred by the Company during the first quarter of the year. Mr. Gagnon, the Company's new President, described this action in the following terms:

" . . . It was a bold move. We appropriated \$9 million in the face of very light profits . . . If those drastic moves had not been made, . . . the company, in my humble opinion, would have gone on the rocks."

The action had the support of Mr. Taylor, who was a member of the new Board. At the hearing he said:

"The best evidence I can give the Commission that the money had to be spent is that . . . ending next spring we will have spent \$9 million on one brewery, to make it modern in every respect.

BY THE CHAIRMAN:

Q. The Dow Plant?

A. Yes, \$9 million".

With the completion of construction on the Dow Brewery and the closing of Dawes Black Horse Brewery, Dow's will have 2 plants operating in the Province of Quebec: Dow and Boswell. In addition, Dow's have acquired, by transfer from Canadian Breweries, 1 of the 23 plants acquired by Canadian Breweries in Ontario. This is the Ranger Brewery of Kitchener, (formerly Blue Top and originally Huether's). Mr. Desrochers testified that Dow's have spent \$500 thousands on repairs to the Ranger plant and doubled the number of employees, with the result that production has been more than doubled.

Ranger brands have been dropped and the plant is making Dow's Ale. Dow's business in Ontario has increased and the Company has been saved freight costs from Montreal.

To balance the Ontario brewery transferred to Dow's, Canadian Breweries retained the Frontenac Brewery in Montreal, purchased from National Breweries in advance of the amalgamation. The Frontenac plant was expanded and repaired at a cost of \$1.9 million and then returned to operation under the name of The Carling Breweries (Quebec) Limited.

Canadian Breweries had abundant surplus capacity available for expansion in the 4 plants that remained in operation in 1952, viz., Dow, Dawes Black Horse and Boswell, owned and operated by the new Dow Company, and Frontenac, renamed Carling's (Quebec) under Canadian Breweries. This fact is made clear by the following figures in which these 4 plants taken together are compared with Molson's, in the year 1952:

	<u>Plants</u>	<u>Capacity (million gallons)</u>	<u>Production (million gallons)</u>	<u>Production as a Percentage of Capacity</u>
Canadian Breweries	4	35.5	23.0	64.9
Molson's	1	43.7	41.0	93.8

It will be seen that Molson's, the largest brewery under one roof in Canada, out-produced the 4 Canadian Breweries plants by 41 to 23 million gallons, but that its production reached 93.8% of its capacity, whereas the competing 4 plants required only 64.9% of their capacity.

The most recent figures for the industry in Canada, with respect to capacity, production and sales, will be considered later in this report.

3. Competitive Features Encountered by Canadian Breweries in Quebec

(a) The Provincial Law and System of Beer Distribution

Prices. The Alcoholic Liquor Act, R.S.Q. 1941, c. 255, gives the Quebec Liquor Commission authority to regulate sale but confers no express power over prices.

According to the Statement of Evidence:

"It would appear that the prices at the various levels are to some extent regulated by the Quebec Brewers' Association, the Tavern Keepers' Association and the Licensed Grocers' section of the Retail Merchants' Association."

This passage in the Statement was apparently based on a statement in a letter to the Director, under date of September 11, 1951, from Edouard Rivard, Q.C., General Manager of the Commission:

"... 3 (a): Les prix sont établis après entente entre l'Association des Brasseries, l'Association des Taverniers, l'Association des Epiciers Licenciés, sujets à l'approbation de la Commission des Liqueurs de Québec."

It will be noted that in the original (French) text of the letter the agreement among the associations referred to is "subject to the approval of the Quebec Liquor Commission".

As for the power of the Commission to grant or withhold such approval, counsel for Canadian Breweries suggested that it rested on the general power to regulate given by the statute to the Commission, the functions, duties and powers of which are, by s. 5, confided to the General Manager.

Distribution. There is no central sales agency, such as Brewers' Warehousing Company Limited in Ontario. Mr. Rivard's letter, mentioned above, states that sales are permitted through privately-owned outlets, such as taverns, hotels, cafés, inns, restaurants, clubs, grocery stores, steamboats and railway cars. Grocery stores holding a licence to sell beer account for over 50% of the sales.

Advertising. Advertising, both institutional and product, is permitted. Mr. Rivard's letter indicates that the only restrictions are to be found in the Code of Advertising Practices, October 12, 1949, agreed to by the brewers and approved by the Commission.

The Code restricts the amount of lineage for each publication; forbids the depiction of drinking scenes and bans "spectacular advertising, such as sky-writing, aircraft broadcasting, etc.", but permits advertising in newspapers and magazines, and by radio and television.

(b) Policy of Canadian Breweries

The wide field of advertising and sales promotion permitted in Quebec has become the scene of sharp competition between Dow Brewery Limited and Molson's. Molson's annual report to its shareholders, for the year 1953, observed:

"Throughout the year and with ever-increasing intensity, competition has followed the pattern predicted in last year's report

to shareholders when it was stated ' . . . it is likely that the cost of sales and advertising will be on an ascending scale . . . '."

The Dow Company's Vice-President and General Manager, Mr. Desrochers, agreed with the above statement. He said this degree of competition was made possible by Canadian Breweries' acquisition of National Breweries. He thought the reference in the Molson's annual report to "new and costly forms of sales and advertising techniques" was prompted by the fact that Dow's had become the first Canadian brewery to use television. Dow also increased its newspaper and radio advertising.

Mr. Desrochers further stated:

" . . . For the year ending October 31, 1954, . . . we will have spent on advertising and sales promotion -- and sales promotion includes the salaries of salesmen, travellers and sales executives and also different kinds of expenses in connection with sales promotion -- we will have spent \$3,200,000, which is considerably more than our company had ever spent before.

. . .

Advertising . . . will be about \$1,600,000 . . . about 50 per cent . . ."

Under the impetus of advertising on this scale, the sales percentages in Quebec improved in favour of Dow at the expense of Molson's, according to these figures submitted by Mr. Desrochers:

Sales Percentages in Quebec

	<u>National-Dow</u>	<u>Molson's</u>
January-October, 1952	28.2	53.4
November, 1953		
to August, 1954	35.0	48.5

CHAPTER V

ORGANIZATION OF WESTERN CANADA BREWERIES

1. Process of Organization

Thirteen years after incorporation of Canadian Breweries, Mr. Taylor made plans for the extension of the Company's interests from Ontario to the West. Under date of April 26, 1943, in a letter to J. A. McDougald, he wrote:

" . . .

Canadian Breweries Limited was originally formed to constitute a strong brewing company in the Province of Ontario, built up from numerous fairly large and small brewing companies of which there were altogether too many in the Province. In the main this task has been completed but there are still three or four companies which could be profitably acquired and, in addition to the replacement of the Ottawa brewery, a bit more has to be done to improve and increase the capacity of our other plants over and above that which can be financed out of our depreciation reserves. Moreover, having been successful in Ontario, we have now raised our sights and plan to repeat the process in the 4 Western Provinces so that we will become a truly national concern.

At the present time we supply Quebec and the Maritime Provinces from our bottling plant in Montreal. As there are not too many breweries in that part of the country, we have no major plans for that territory. We will simply add a bit to the size of our Montreal plant and hope to increase our share of the business in the East in future years. The West however is a different matter. There are too many breweries in all of the provinces and there is a golden opportunity to repeat our Ontario performance. You will readily understand that there is a great advantage in being a truly national institution. In normal times we advertise in publications with a national circulation and there is great wastage if we do not sell our products in the entire country. Upon the acquisition by us of western companies we would of course produce our well-known Ontario brands in the western plants and gradually soft-pedal the local brands.

". . ."

In addition to the above motives for expansion, there was the substantial factor of freight cost, on the beer shipped from Ontario

breweries to the Western Provinces, which was charged, in effect, partly against the customer in the West and partly against the Ontario brewery.

By 1948, Canadian Breweries owned shares in 2 western companies, viz., approximately 30,000 shares in Western Breweries Limited of Winnipeg, with breweries in Manitoba and Saskatchewan, and approximately 45,000 shares in Brewers & Distillers of Vancouver, Limited, of which Vancouver Breweries Limited was a wholly owned brewing subsidiary. Mr. Taylor, in a letter applying for a bank loan for the purpose of acquiring these shares from Canadian Breweries, for a proposed new company, wrote:

"Briefly, it is our plan to build up in the four western provinces a strong and robust brewing consolidation in the same manner that Canadian Breweries Limited was put together and developed in Eastern Canada . . ."

With banking support, Mr. Taylor and M. W. McCutcheon, an associate on the Board of Canadian Breweries, purchased additional shares in the Vancouver Company from English shareholders; effected, through the Vancouver Company, purchase of 90% of the shares in Western Breweries in December, 1949; and in February, 1950, caused the Vancouver Company to be renamed "Western Canada Breweries Limited".

In 1950, Mr. Taylor desired that Colonel H. S. Tobin, who had carried on from the presidency of the Vancouver Company to the same position in the new Western Canada Breweries Limited, should retire in favour of the General Manager, W. Ross MacKenzie, who had entered the new company from a similar position in Western Breweries Limited. Mr. Taylor also considered that he and Mr. McCutcheon should be added to the Board of Directors of the new company, in support of Mr. MacKenzie. In expressing these views to one of the English shareholders, Mr. Taylor wrote on July 25, 1950:

" . . . Every informed person in this country knows that we represent the largest individual shareholding (approximately 100,000 shares) and a substantial number of the convertible debentures. We propose to continually add to our holdings because we have great faith in the future of Western Canada Breweries Limited."

These changes were carried out at a meeting of the Directors of Western Canada Breweries Limited held on October 4, 1950, Mr. Tobin being appointed Chairman of the Board. Later, Canadian Breweries entered the picture directly as owner of the shares acquired by Messrs. Taylor and McCutcheon and on October 15, 1953, it held 23.8% of the stock of Western Canada Breweries.

On the date when Mr. Black, President of Canadian Breweries, gave testimony at the hearing, Canadian Breweries still had 2 seats on the Board, but the majority of the Board represented the majority shareholders in England. Canadian Breweries' share interest, while a minority one, was the largest held by a single shareholder. There were no officers common to the 2 Companies, but technical experts of Canadian Breweries were available to Western Canada Breweries, on a fee basis, to make suggestions as to engineering and production.

In addition to the plants in Manitoba, Saskatchewan and British Columbia acquired through the combination of the Vancouver and Winnipeg Companies under the name "Western Canada Breweries", control of 2 other companies in Western Canada was obtained.

Control of Grant's Brewery Limited of Winnipeg was acquired in this fashion. Western Canada Breweries Limited caused the incorporation of a new company named Gran-tor Limited to purchase all the issued shares of Grant's. Western Canada Breweries Limited then purchased all the preferred shares of Gran-tor Limited, and still another company, Torcan Investments Limited, acquired all the common shares of Gran-tor (i.e., the voting stock). The three Directors of Torcan Investments Limited are E. P. Taylor, M. W. McCutcheon and J. A. McDougald, all of whom are also Directors of Canadian Breweries.

The last step in the western development was the acquisition of a property in Alberta. Western Canada Breweries Limited failed to obtain more than a minority interest in the Northwest Brewing Company Limited of Edmonton, but it succeeded in purchasing control of Red Deer Brewing Company Limited in 1953, when that newly-incorporated company found it necessary to seek funds for the completion of its brewery. Mr. F. N. Ward, Vice-President in Charge of Production for Canadian Breweries testified at the hearing that the Red Deer Brewery was brought into production in 1954, under the supervision of the production department of Canadian Breweries.

As a result of this program, Western Canada Breweries:

- | | |
|----------------------------------|---|
| Owns and operates 2 breweries: | Drewrys, Manitoba Division,
Winnipeg;
Drewrys, Saskatchewan
Division, Saskatoon. |
| Wholly owns 2 brewery companies: | Blue Label Brewery Limited,
Regina: now Carling's
(Regina);
Vancouver Breweries Limited,
Vancouver. |
| Owns a majority interest in: | Red Deer Brewing Company
Limited, Red Deer, Alberta. |

Controls, in association with
Taylor interests:

Grant's Brewery Limited,
Winnipeg.

This brings 6 breweries within the orbit of Canadian Breweries - Western Canada Breweries, apart from minority interests held in the Kiewel Brewing Company Limited, St. Boniface, Manitoba; Pelissier's Brewery Limited, Winnipeg, Manitoba; and the Northwest Brewing Company Limited, Edmonton.

The minority interest in Kiewel and Pelissier is now subject to the majority interest of John Labatt Limited, which Labatt's acquired when it obtained control of Shea's Winnipeg Brewery Limited in 1953-54. The Shea group accounted for 52.8% of sales in the Manitoba beer market in 1952. The method used by Labatt's in taking over Shea's was an exchange of shares, similar to the method frequently used by Canadian Breweries in its Ontario acquisitions.

2. Promotion of Canadian Breweries' Brands in the West

George M. Black, President of Canadian Breweries, testified that, since the Blue Label Brewery Limited, Regina, Saskatchewan, became a wholly-owned subsidiary of Western Canada Breweries, its name has been changed to The Carling Breweries (Regina) Limited and it has begun production of Carling's brands under a licence to use the trade mark of Carling's Black Label. The licensing agreement, dated July 26, 1954, provides for payment by the western Company to Carling Breweries Limited, of a service charge based on the amount spent by Carling Breweries Limited for advertising in publications sold in the Province of Saskatchewan and on the volume of sales effected by the western Company in Saskatchewan in each year.

In the course of his remarks to Canadian Breweries shareholders, at their annual meeting in Toronto, February 8, 1954, Mr. Taylor said:

" . . . It is our hope that eventually certain of the brands we now produce in Ontario and Quebec, and which we advertise nationally, can be manufactured in the West. Beer is a bulky and a heavy commodity, and it can be sold only at popular prices, relatively close to the brewery in which it is produced."

Mr. Taylor testified that he hoped Mr. MacKenzie (President and General Manager of Western Canada Breweries) "will eventually persuade us or ask us for the name in all of the provinces so that these brands can be sold right across Canada".

3. Competitive Features Encountered by Canadian Breweries in Western Canada

(a) Provincial Laws

The relevant statutes and regulations in the 4 Western Provinces place the brewing industry under more severe control by the provincial governments than is the case in Ontario and Quebec. Brewers must sell their beer direct to the government Liquor Control Boards in Saskatchewan, Alberta and in British Columbia, while in Manitoba, maximum prices are set by the Government Liquor Control Commission.

Advertising is forbidden or restricted in all these provinces. However, the provincial governments cannot prevent the entry into the provinces, from Eastern Canada or the United States, of printed, broadcast or televised advertisements of beer.

(b) Trade Agreements

There is no evidence that trade or price agreements were initiated by Canadian Breweries after their appearance in the western field. There is evidence that after the formation of Western Canada Breweries Limited it fell heir to certain quota agreements previously arrived at. The minutes of the Executive Committee of Western Canada for November 8, 1950, record the assignment to that Company of "certain agreements" which one of its predecessors, The Drewrys Company of Winnipeg had made with Shea's Winnipeg Brewery, one of its competitors, and with Brewery Products Limited, a delivery agency in Winnipeg. Assignment was also recorded of "certain agreements" which another predecessor, Drewrys of Saskatoon and Regina, had made with 2 Sicks' brewing companies and Saskatoon Brewing Company, all competitors in Saskatchewan. The minutes do not record the details of these agreements.

CHAPTER VI

INTERNATIONAL OPERATIONS

1. United States of America

The connection of Canadian Breweries with the United States began with the repeal of prohibition there in 1933. Peerless Motor Car Corporation of Cleveland, Ohio, converted its plant into a brewery and began brewing operations under the name Peerless Corporation. In return for certain trade mark and other rights, Canadian Breweries received 5% of Peerless' stock, with representation on the Board of Directors. The Company was renamed Brewing Corporation of America in 1938.

Canadian Breweries continued to acquire stock in Brewing Corporation of America until control was obtained in 1944. By 1951, it held 95% of the issued stock, through a subsidiary, Canadian Breweries Inc.

On February 8, 1954, Mr. Taylor told the annual meeting of Canadian Breweries shareholders:

"The year in review was the best in the history of the company from the standpoint of profits . . .

The principal factor in the improved showing was the change in the status of your U.S. subsidiary, which operated at a substantial profit for the first time in several years . . .

. . . In point of both bottled beer and ale sales we are amongst the first twelve in the U.S.A. at this time. In the process of remaining in this select company, we should grow in size rapidly."

At the time of the hearing Messrs. Taylor and Black of Canadian Breweries were Directors of the American subsidiary, recently renamed Carling Brewing Company Inc.

Newspaper reports that Carling Brewing Company Inc. of Cleveland was then purchasing, for \$10 million, the Griesedeck Western Brewing Company of St. Louis and Belleville, were confirmed by Mr. Black in his evidence. He agreed with the statement attributed by a news report to a representative of Carling (Cleveland):

"We shall acquire the famous Stag beer brand . . . and . . . facilities strategically located to sell Carling's Red Cap ale and

Black Label beer in western and southern States".

As for the future, Mr. Taylor testified that, in his belief, the present number of brewing companies in the United States, about 300, will be reduced to 10 or 12, under the impetus of the factors favouring the big producers - low costs, national advertising and the building of branch plants. Mr. Taylor said he found his example in the 2 great Canadian distilling companies, 1 of which was first and the other third or fourth in size in the United States. He added:

"Now, Carling, our Canadian brand there, is running about tenth, and, as Mr. Black said yesterday, we hope some day to be first".

(Press reports since the hearing state that Carling has purchased a third brewery, this one in Massachusetts.)

Carling's Red Cap and Black Label are the brands sold in expanding volume since 1933 by the United States subsidiary of Canadian Breweries. Carling's (Quebec) is the new name given by Canadian Breweries to the Frontenac plant acquired from National in Montreal. Carling continues as a brewing group within Canadian Breweries in Ontario. Carling's Black Label is now being brewed in Regina. The advertising in all of these jurisdictions will enable the name "Carling" to achieve continent wide publicity.

2. United Kingdom

Canadian Breweries makes ale and stout, at the Brading plant in Ottawa, to the specifications of Hope and Anchor Brewery of Sheffield, England. This beer is sold in Ontario through Jubilee Brewery Limited. At Sheffield, Hope and Anchor makes lager beer, to the specifications of Canadian Breweries, for sale in England through its subsidiary, Canadian Breweries (International) Limited. The reciprocal arrangement is based on an agreement which recites that Canadian Breweries is seeking a base in the sterling area, while Hope and Anchor is seeking a base in the dollar area; and that while neither Company is able to make a complete plant available to the other, both Companies wish to have their own plants as soon as facilities are available and sales volume is adequate.

Mr. Taylor testified, with reference to Canadian Breweries' English activity:

"It is a very tiny operation, but it may have important results for us."

CHAPTER VII

SUMMARY

Acquisitions by Canadian Breweries Limited

As a result of its acquisitions, Canadian Breweries has obtained ownership of more than 60% of the brewing industry in Ontario and more than 50% in the Provinces of Ontario and Quebec combined. Its holdings in the 2 populous central provinces give it close to 40% of the business in all Canada. That figure exceeds 40% with the addition of those companies in Western Canada in which Canadian Breweries is the largest single shareholder.

The percentages shown below for the industry in 1952, give the picture for each region in respect of capacity, production and sales. These figures are taken from the Statement of Evidence and were obtained from returns filed by the brewing companies with the Director of Investigation and Research.

Ontario

	<u>Capacity</u>	<u>Production</u>	<u>Sales</u>
Canadian Breweries, including companies absorbed, 1952-53	69.3	68.7	64.2
Labatt's	25.6	27.1	22.8
Molson's	....	....	8.6
Others	<u>5.1</u>	<u>4.2</u>	<u>4.4</u>
	100.0	100.0	100.0

Quebec

	<u>Capacity</u>	<u>Production</u>	<u>Sales</u>
Canadian Breweries	44.8	36.0	41.9
Molson's	55.2	64.0	54.7
Labatt's	....	....	3.1
Others	<u>....</u>	<u>....</u>	<u>0.3</u>
	100.0	100.0	100.0

Ontario and Quebec

	<u>Capacity</u>	<u>Production</u>	<u>Sales</u>
Canadian Breweries	57.7	54.4	54.6
Molson's	26.2	28.0	28.5
Labatt's	13.5	15.2	14.3
Others	2.6	2.4	2.6
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>

British Columbia, Manitoba and Saskatchewan

	<u>Capacity</u>	<u>Production</u>	<u>Sales</u>
Western Canada Breweries plus Grant's Brewery of Winnipeg	31.5	34.1	34.4

Canada

Averages for the period 1949-1952

	<u>Capacity</u>	<u>Production</u>	<u>Sales</u>
Canadian Breweries	44.7	42.6	42.9
Western Canada Breweries	5.4	5.5	5.5
Grant's Brewery	0.4	0.2	0.2
	<u>50.5</u>	<u>48.3</u>	<u>48.6</u>
All other Breweries in Canada	49.5	51.7	51.4
	<u>100.0</u>	<u>100.0</u>	<u>100.0</u>

Canada

Production for the year 1952 alone

	<u>Plants</u>	<u>Percentage of Production</u>	
Canadian Breweries	15 in Ontario and Quebec	38.9	
Western Canada Breweries	4 in Western Canada	5.6	
Grant's	1 in Winnipeg	0.2	
		<u>44.7</u>	
Molson's	1 in Montreal		20.0
Labatt's	2 in Ontario and 3 in Manitoba		13.5
Sicks'	5 in Western Canada		6.7
All others	29, in all parts of Canada (the highest producer represent- ing 2.8%)		15.1
	<u>60</u>	<u>44.7</u>	<u>55.3</u>

Companies absorbed by Canadian Breweries 1952-53, were included with this Company in all of the above tables. The final table, showing production for 1952 includes all 15 of Canadian Breweries' plants, but allowance must be made for lower production by those in Quebec which were undergoing reorganization during that year.

The following figures for the years 1953 and 1954 have been obtained since the hearing from the 3 Companies revealed in the tables as leaders in the Canadian brewing industry: Canadian Breweries, Molson's and Labatt's, and in addition from Western Canada Breweries:

Capacity (in millions of barrels)

	<u>1953</u>	<u>1954</u>
Canadian Breweries (15 plants)	3.95	4.06
Western Canada Breweries (5 plants in 1953 and 6 in 1954)	<u>.49</u>	<u>.72</u>
Total of Canadian Breweries plus Western Canada Breweries	4.44	4.78
Molson's (1 plant)	1.75	1.75
Labatt's (5 plants)	<u>1.18</u>	<u>1.23</u>
Total of Molson's plus Labatt's	2.93	2.98

Production (in millions of gallons)

	<u>1953</u>	<u>1954</u>
Canadian Breweries	85.68	89.96
Western Canada Breweries	<u>11.72</u>	<u>12.29</u>
Total of Canadian Breweries plus Western Canada Breweries	97.40	102.25
Molson's	41.94	37.44
Labatt's	<u>29.59</u>	<u>28.40</u>
Total of Molson's plus Labatt's	71.53	65.84

Sales (in millions of gallons)

	<u>1953</u>	<u>1954</u>
Canadian Breweries	82.99	85.20
Western Canada Breweries	<u>11.09</u>	<u>11.52</u>
Total of Canadian Breweries plus Western Canada Breweries	94.08	96.72
Molson's	41.07	35.96
Labatt's	<u>27.21</u>	<u>27.07</u>
Total of Molson's plus Labatt's	68.28	63.03

Note as to Sales

In computing sales, the industry changed its figure, during 1954, from 1.70 gallons to 1.65 gallons for each dozen large bottles. The 1954 figures reflect the new basis of computation for Molson's, which has a greater sale of the large bottles than Canadian Breweries or Labatt's. While Canadian Breweries figures have been reported on the old basis and Labatt's have not indicated their basis of computation, the figures, as they stand, would seem to be sufficiently accurate for purposes of comparison.

Under each of the 3 headings the figures tell the same story: Those for Canadian Breweries, before the addition of those for Western Canada Breweries, are greater than the sum total of Molson's plus Labatt's.

This position cannot be expected to vary greatly in the near future, in view of the developments predicted by each company in its reports. Molson's expects to bring its Toronto brewery into production this year with annual capacity of 250,000 barrels and Labatt's to open its Montreal plant in 1956 with annual capacity of 230,000 barrels, but Canadian Breweries also predicts expansion during 1955-1956. Its plants, after the closing of one in Montreal, will have a net increase in capacity of 230,000 barrels. Western Canada Breweries will have a further increase in capacity at Winnipeg, in 1956, of 90,000 barrels. Moreover, the 1953-54 figures for Canadian Breweries are based on its Ontario and Quebec plants only. They are exclusive of those for Western Canada Breweries Limited and Grant's Brewery Limited of Winnipeg. They pertain only to Canada and exclude Canadian Breweries' international operations: that in the United States, which has reached formidable proportions, and that in the United Kingdom, which is relatively small.

CHAPTER VIII

POSITION OF MR. E. P. TAYLOR

Edward P. Taylor was President of Canadian Breweries and its predecessor companies, 1930-1944, and Chairman of the Board of Directors from 1944 to date.

Mr. Taylor testified that he is 1 of 18,000 shareholders of Canadian Breweries. He thought there were 2,503,000 shares outstanding, of which he held 12,600 in his own name and 1,155 as his father's executor. His activities since the incorporation of Canadian Breweries and its predecessor companies have been those of an officer and a Director acting on behalf of Canadian Breweries and not transactions on his own behalf.

In describing his duties as Chairman of the Board, Mr. Taylor testified:

" . . . but generally matters pertaining to capital expenditure which are reviewed in the main once a year, as well as advertising appropriations, once a year, and general policies, certainly any of these capital acquisitions, mergers, or acquisitions of these plants, most certainly those are my business."

Of his earlier duties as President and General Manager from 1930, he said in a letter dated June 2, 1942:

" . . . The actual day to day operations of the business were from the outset in my hands as General Manager of the Company."

CHAPTER IX

ARGUMENT SUBMITTED ON BEHALF OF THE DIRECTOR AND ON BEHALF OF CANADIAN BREWERIES LIMITED AND E. P. TAYLOR

At the hearing counsel for the Director and counsel for the Company and Mr. Taylor both presented carefully prepared comprehensive arguments, discussing and analyzing the various issues arising in the case. Since this is the first case of its kind to come before the Commission and some of the questions involved have not previously been presented to us for consideration, we believe it will be helpful if the main elements of the arguments on both sides are presented here in somewhat greater detail than usual. For convenience, points raised in reply are here included with the main argument.

1. Argument on Behalf of the Director

Counsel for the Director of Investigation and Research submitted that the basic facts set out in the Statement of Evidence had not been controverted by evidence at the hearing. These facts were derived from many documents which clearly show the plan and design for the organization and development of Canadian Breweries Limited. He suggested that the design might be epitomized in an extract from a letter dated May 22, 1934, written by Mr. Taylor to J. A. MacDonald, which is quoted in the Statement of Evidence (p. 113):

"I am sure that we now have the power to control prices and sales practices of the industry and while it may be necessary for us to start local price wars here and there to discipline a small competitor, I am sure the profits will prove most gratifying to the shareholders."

Counsel argued that the plan had been pursued from its beginning in 1929 and 1930, and had not yet reached its complete fulfilment.

There was nothing accidental about what occurred. Nor did it flow from the inevitable economics of large scale production. In point of fact, the nature of the product and the methods by which the production in a plant may be increased render this industry peculiarly suited to dispersion and independence of plants. There is essentially no difference in technique between large and small breweries.

Power was obtained and competition was eliminated by deliberate, direct, intentional acts.

Again, this was not a case of many small moribund companies being taken into a group. Many of those acquired in Ontario were financially strong and had substantial percentages of the industry business. These firms, e.g., O'Keefe, Canada Bud, were repeatedly referred to in the documentary evidence as necessary acquisitions for the purpose of obtaining industry control. It is true that some of those acquired and closed were small. Much more was paid for them than they were worth when scrapped. It was deemed worth the overpayment to eliminate their competition or to secure an added degree of market control. Many of those closed had been long established breweries in their own communities.

From the foregoing it is clear that the purposes of the promoters of Canadian Breweries Limited were primarily strategic and financial -- the financial gains to be obtained by corporate reorganization and promotion, and the strategic gains to be obtained by control of the market. Market control, not market efficiency, was the objective. If the purpose had been merely one of technological improvement in the industry, it would have been easier, instead of buying up many plants and closing down many of those acquired, to build a new plant, or take over one or two plants and refurbish them, concentrating on efficiency and the advantages of large scale production.

In the course of working out the plan, Canadian Breweries Limited soon reached a position where it could and did exercise a decisive influence on the market.

In the end, as the result of carrying out this plan there are in Ontario today, to all intents and purposes, only 2 competing breweries, or 3 if we include Molson's. If this deliberate interference with the normal course had not occurred we might well have in Ontario now a large enough group of strong independent companies to supply effective competition. The present situation undoubtedly facilitates arrangements between Canadian Breweries and its few remaining competitors.

Today there is not effective competition. Counsel maintained that prices are established, basically, by agreement and that there is no price competition. He argued that what competition does exist is all of cost increasing kinds, such as lavish entertainment, sales promotion and advertising, from which the public derive no material benefit.

In Quebec a similar non-competitive position is being approached, there being in that province also only 2 competing breweries, or 3 if we include Labatt's.

In Western Canada the plan is only in an incipient but still advanced stage. Western Canada Breweries Limited, counsel maintained, is not independent of Canadian Breweries, though that Company

owns only 23.8% of the shares of Western Canada. He argued that by control in matters of this kind we mean practical control, not necessarily the possession of 51% of the Company's stock, and that from this point of view Western Canada Breweries Limited was, in a practical sense, under Mr. Taylor's control. He submitted that the organization of the Company and its development were planned and intended to benefit Canadian Breweries Limited. Already Western Canada's Regina plant (renamed Carling's) is bearing part of the national advertising costs of Canadian Breweries' Carling subsidiary. Canadian Breweries Limited is by far the largest shareholder in Western Canada Breweries, and the ownership of the balance of the shares is widely dispersed. Further, the new President of the Company, Mr. MacKenzie, was put there by Mr. Taylor.

With respect to provincial government control of the industry, counsel maintained that the several provincial Acts were not like public utility Acts. They did not attempt to regulate every phase of the industry, but only those features in which control was deemed necessary in the public interest, almost entirely at the consumer level. All aspects of the industry not specifically controlled by the legislation were left free. Referring to Ontario, he discussed the position as to prices charged by the breweries. He argued that the minutes of Brewers' Warehousing Company Limited clearly show that from 1930 down to the end of the war prices and all related matters were in fact governed by the meetings of that Company, not by the Liquor Control Board. Prices agreed to were forwarded to the Board, because the Board handled all the brewers' brands, but this cannot be called a record of Board approval of prices. Since the war, some change in government policy has occurred. Requests for price changes are now forwarded to the Board and notices are sent back from the Board in the form of granting approval, but it seems to be pro forma only.

Counsel argued that the main concern of our Canadian legislation is to prevent, as far as possible, deliberate and substantial interference with normal competitive forces, such as had occurred here. In reply to an argument advanced by Mr. O'Donnell, he maintained that, if the Commission were to attempt in each case to determine whether or not the industry in question (in this case Canadian Breweries Limited) was a good thing from the point of view of the public interest, it would really become a super public utility board for every industry, and that this was not the Commission's function. Further, a short term answer, based on the results found at a particular moment, would not solve the problem. Our legislation makes it clear that, regardless of the results at the particular moment, deliberate and substantial interference with competition is condemned in principle and, for social, economic and political reasons, should not be allowed.

Counsel stated that two provisions of the Combines Investigation Act deal with the situation disclosed in this case, Section

2(e)(i) and 2(e)(ii). The first is clearly directed against mergers that substantially lessen competition, which has occurred here. The second is directed against cases where substantial control is secured or aimed at. The tests proposed by Mr. O'Donnell are suitable only for determining cases of 100% monopoly or control of an industry. Our law does not require absolute 100% control in order to establish a monopoly. Substantial control only is quite sufficient. A prevailing influence will do. It is not necessary to show control at all times and all places and in all parts of the market and for all purposes.

Counsel could not accept Mr. O'Donnell's statement that there is effective competition in the brewing industry today. He said that effective competition required certain standards, namely:

- (a) A reasonably large number of competitors,
- (b) No single competitor in control of a significant segment of the market,
- (c) No element of collusion between the competitors,
- (d) No artificial barriers to entry by new firms,
- (e) It should result in proper utilization of resources.

He stated that not one of these standards fits the market situation in this case.

2. Argument on Behalf of Canadian Breweries Limited and E. P. Taylor

Counsel for Canadian Breweries Limited and E. P. Taylor contended that the evidence before the Commission supported the position taken by them at the opening of the hearing, viz.:

"The allegations of detriment are unfounded in law and in fact, both as against Canadian Breweries Limited and as against Mr. E. P. Taylor. Canadian Breweries Limited is not, within the meaning of the Combines Investigation Act, a combine or merger, trust or monopoly which has operated to the detriment or against the interests of the public, whether consumers, producers or others. Mr. E. P. Taylor has not been and is not a party to a combine within the meaning of the said Act."

Particular emphasis was laid on the question of public detriment. Counsel stated:

"That is the point I emphasize most. If there is no detriment, there is no need to complain. Even if we merge again tomorrow, and there is no detriment, there is no offence."

Counsel admitted that from the incorporation of the Company in 1930 there had been a merger plan for Ontario, and that in accordance with that plan 23 breweries in Southern Ontario had been merged, but argued that the Company was not in a position of control of the industry in Ontario, that the position created by the consolidation effected had not injured anyone, and that what had been done was not and is not detrimental to the public, but on the contrary was and is positively beneficial and in the public interest. Similarly, it was argued that no detrimental effects had flowed from Canadian Breweries' activities in Western Canada nor from its acquisition of National Breweries Limited in Montreal.

The argument had several phases:

1. It was submitted that the allegations against Canadian Breweries Limited meant essentially that the Company constituted a monopoly or had attained a position of monopoly in the brewing industry, a position which necessarily involved a high degree of control over the operations of the industry. Counsel contended that such a position did not and could not exist in the brewing industry. This contention rested chiefly on two grounds:

(a) Government control, mainly provincial, of this industry is so extensive that it may be called a government regulated industry. It was argued that in Ontario, where most of the actions complained of took place, this control was the strictest yet attempted in any province. As counsel put it:

"A brewer . . . is not allowed to fix the price of his product; he is not allowed to advertise the price of his product; he is not allowed to put more than so much alcohol in it; he is not allowed to deliver it as he pleases and to whom he pleases, and he is restricted in his activities in every way. It is a regulated industry."

Throughout the period under review in this inquiry the prices approved by the Liquor Control Board of Ontario were looked upon as fixed prices, except that in 1950 the Board stated that the prices set were "maximum prices". The Board's complete control over licences gave it the power to fix prices.

(b) Within the limits permissible under government control (varying in different provinces and being much less strict in Quebec than in Ontario) competition was keen. Competition from other brewers would result in loss of Canadian Breweries' markets if the Company attempted to raise prices or lower the quality or

quantity of the product. Nor had the Company any power to prevent anyone entering the industry. It possessed none of the powers normally associated with industry control. There is still effective competition in the industry.

2. The Commission's duty, under Section 19(1) of the Combines Investigation Act, is to "appraise the effect on the public interest of arrangements and practices disclosed in the evidence". This is a duty to ascertain the effect on the basis of the facts disclosed. The Commission is not bound by the reasoning in the Container Materials case and similar cases. Furthermore the test that should be applied is the effect on the public interest at the present time, not what was said in letters and memoranda of past years. What the Company is doing now is what matters, not how it got to be what it is.

3. No public detriment resulted from the mergers that occurred in Ontario. In 1930, when the merger program was launched, there were many breweries in Ontario with productive capacity far in excess of market consumption. By 1933 sales had dropped to 7,460,000 gallons of beer. Some mergers had occurred, but there were still 30 Ontario breweries, 4 Quebec breweries and 1 Manitoba brewery fighting for shares of that very limited market. In addition to great surplus brewing capacity, many of the breweries were near bankruptcy, occupied poor and dilapidated buildings and produced poor quality beer. Rampant illegality existed, as appears from the many complaints about bootlegging, use of "runners", the "export" business, and other illegal practices. Canadian Breweries Limited assisted in cleaning up this nasty situation by buying and closing a number of breweries, thereby reducing the surplus capacity in the industry. The plants that were shut down were closed because they were unfit to face competition.

4. All the mergers effected by Canadian Breweries Limited were discussed with and approved by the Ontario Liquor Control Board. That Board, in its second annual report, said there were more than sufficient breweries and that no new undertaking should be incorporated.

5. What Canadian Breweries Limited did in Ontario in 1930, and the succeeding years, and the method followed were only an imitation of what had happened in Quebec in 1909, when National Breweries Limited was incorporated and merged 14 breweries in that province.

6. The business is now on a decent, clean basis. The Company employs a skilled staff of scientists, technicians and engineers. It operates a school for training brewmasters. The small brewing companies could not afford these services, but they are certainly beneficial to the public, ensuring a uniform high quality of product.

7. The entry of Canadian Breweries Limited into Quebec and its acquisition of National Breweries Limited were beneficial to the

public. National Breweries Limited had lost ground heavily during the preceding three years and Molson's had grown proportionately. The acquisition of National Breweries strengthened that Company (renamed Dow), thereby increasing competition, not decreasing it.

8. Canadian Breweries Limited holds only 23.8% of the stock of Western Canada Breweries Limited. Control is in the hands of English shareholders, who own 48% of the stock and whose representatives elect the majority of Directors.

9. The brewing industry today requires the expenditure of large sums in plant, equipment and research. The increased investment required is a factor tending to the concentration of productive facilities in fewer and larger firms than in the past. This does not mean the elimination of competition. Canadian Breweries faces keen competition today, particularly from 2 firms: Molson's, which has at Montreal the largest brewery under one roof in Canada and is now building a plant at Toronto; and Labatt's, which, in addition to its 2 Ontario plants, has obtained control of the largest producer in Manitoba and is now building a plant at Montreal.

10. Mr. E. P. Taylor, throughout the whole period since 1930, has acted as an officer and Director of the Company and never on his own behalf. He is only one of many officers and Directors the Company has had during all these years. He should not be singled out from all the others, nor since he acted only in his official capacity should he be charged personally as a party to any alleged offence.

In view of the fact that the allegations against Canadian Breweries Limited and E. P. Taylor are to the effect that the public interest has been and is being affected both as a result of the numerous acquisitions made and because Canadian Breweries is now substantially in control of the market for beer, we shall now discuss in separate chapters the imputations made under these two aspects of the case.

CHAPTER X

PURPOSE AND EFFECT OF THE MERGER PROGRAM

1. In Relation to the General Pattern of Competition

In preceding chapters, we have outlined the growth and development of Canadian Breweries Limited, since its incorporation in 1930, first in Ontario and later in Western Canada and Quebec. We have also considered the substantial developments of the Company in the United States, and its incipient operations in the United Kingdom. More particularly in the area covering the whole of Southern Ontario and in the Province of Quebec, the present structure of the Company, as well as its position in the industry, have been achieved through a succession of acquisitions of competing brewing companies, with, as a result, Canadian Breweries being left almost alone in the field with only two large competitors, Molson's and Labatt's. In the course and because of the formation of this merger, the whole pattern of competition in the Province of Ontario has been essentially and irrevocably changed from that which prevailed at the time of incorporation of this Company. In Southern Ontario, 23 breweries have been acquired in the process, 12 have been closed down by Canadian Breweries after their acquisition and have not resumed operations since, and the number of former brands of beer has been cut down by the Company, from more than 150 to nine only.

Whereas, in 1930, a great number of individual brewers, some small and some quite large, were operating in free competition, production has now been concentrated in a very few big plants, strategically located to serve areas of large population.

From the evidence given by Mr. E. P. Taylor before the Commission, it would appear to be the latter's opinion that the disappearance of practically all the small brewing concerns, as well as this concentration of the industry in the hands of two or three large, strongly financed companies were almost, if not quite, inevitable developments. Counsel for the Company and for Mr. E. P. Taylor strongly contended that the public interest has not been affected by this transformation of the aspect of competition in the trade, that it has not been established that detriment has resulted therefrom and, at all events, that the present state of affairs is nothing but the normal result of an evolution that was called for by the very nature of the brewing industry and by the circumstances of modern marketing.

In the opinion of the Commission, the record shows that what this industry is presently faced with, is not the mere result of planned expansion. It is rather the successful result of a fully planned program of elimination of competition and of shaping the whole pattern of the market to suit the purposes of one brewing company. That almost total elimination of competition was not the necessary result of Canadian Breweries' expansion, but that Canadian Breweries has rather expanded as a result of the elimination of competition, the whole according to a preconceived plan, clearly appears from the steps taken and statements made by Mr. E. P. Taylor, down through the years since the creation of the Company in 1930, often on the occasion of a new or proposed acquisition, from the statements of persons other than Mr. Taylor himself and directly connected with or interested in Canadian Breweries Limited, and also from the very nature of the methods and tactics adopted for the purpose of eliminating competitors, as well as from the disposal made of many of the breweries, after their acquisition.

(a) Statements by Mr. Taylor

In a letter dated September 16, 1930, addressed to Mr. R. D. Prichard, Secretary of the London Committee, Mr. Taylor, discussing the steps already taken by Canadian Breweries and certain of its plans, insisted

" . . . that the large benefits of the merger will only come after we control the bulk of the beer business of the province. "

In a letter addressed to Mr. M. A. Cameron, of Toronto, and dated July 13, 1931, Mr. Taylor referred to the recent acquisition of Carling Breweries Limited and admitted "that this Company was in a very bad shape when we took it over", and that its losses in the year 1930, had amounted to over \$400 thousands. He added:

"The principal reasons that prompted us to do so were that we were looking for a degree of control in the industry in Ontario that was not possible without Carling's, and we believed that under careful management that Carling's could be made to show a small profit even under existing conditions. "

Another reference with respect to control of the industry is found in a letter from Mr. Taylor to Mr. R. D. Prichard, dated December 11, 1931:

"I absolutely agree with the Committee that we should concentrate entirely on the acquisition of new units located within the boundaries of Ontario, for the reason that practically all of our investment at present is in Ontario and it is necessary to further safeguard that investment by obtaining greater control over the industry here. "

In a confidential memorandum to Mr. W. B. Cleland, concerning the brewing situation in Ontario at the end of the year 1931, Mr. Taylor referred to the fact that, in 1909, National Breweries had rid itself of excessive competition in the Province of Quebec, by the amalgamation of 14 brewing companies and by gradually closing all but four of the plants. He stated:

"It is my belief that exactly the same accomplishment can be completed in Ontario if those of us who are leaders in the business bring our companies together as a strong nucleus for the final completion of a consolidation involving all but one or two of the Ontario brewing companies."

In a memorandum prepared for the London Committee around 1931, it was clearly brought out that Canadian Breweries had been incorporated for the purpose of acquiring ownership or control of a sufficient number of selected brewing corporations "to establish itself as a dominant factor in the brewing business within [the] province [of Ontario]". Reference was there made to the planned disposal of a number of the plants to be acquired:

"The ownership of a considerable number of plants is not without its hazard and responsibility. It is not the purpose of the Company to indefinitely maintain the number of plants which it now controls. It is rather its purpose to concentrate in the fewest number of plants the volume of business now enjoyed by too great a number of plants. On the other hand, it is not possible to accomplish this result until the Corporation has such a control over its market that it can be sure that the closing of any specific plant will not mean a reduction of its total volume."

In a letter written to Mr. W. B. Cleland, as early as March 5, 1932, Mr. Taylor outlined a plan for the completion of the consolidation scheme, dividing all of the breweries selling in Ontario, into four groups. The first group contained the names of the breweries which it was intended to keep open after consolidation had been completed, this group being estimated by Mr. Taylor as accounting for 52% of the total volume of the Ontario sales of beer. The second group consisted of John Labatt's Limited and Capital Breweries Limited, accounting for 15% of the total sales and which were "to be left as opposition located in Ontario". The third group, said to account for 12% of the Ontario sales, consisted of the Quebec breweries selling in Ontario. Finally, the fourth group, said to account for 21% of the total business of Ontario, consisted of a list of 19 breweries "to be acquired and ultimately closed".

On January 12, 1933, in a letter to Mr. Prichard, of the London Committee, Mr. Taylor reported on an interview which he had had with Mr. Kiewel of Canada Bud Breweries Limited, where the consolidation of Canada Bud, O'Keefe and Cosgrave Breweries with Canadian Breweries had been discussed. He stated that Mr. Kiewel

was in favour of the consolidation, because "he believed this was necessary in order to bring about stability in the industry and make possible the closing of a great many plants". Mr. Kiewel was reported to have insisted however that the merger should be "in a position to compel the numerous small, but troublesome, companies that would be left on the outside to come in with us". These so-called troublesome companies were listed as follows:

Reinhardt Brewery of Toronto,
Copland Brewery of Toronto,
Cronmiller & White of Welland,
Bixel Brewery of Brantford,
Huether of Kitchener,
Walkerville of Windsor,
Hofer " "
Riverside " "
Perth Brewery of Stratford,
Formosa Brewery of Formosa.

The letter went on to describe in the following terms the probable control situation that would result from the envisaged merger:

"We know that with the consolidation an accomplished fact and half a million dollars cash in the bank, we would be in a position to make the operations of any one of the above listed companies so disastrous that they would be forced to consolidate with us or go out of business."

While the proposed merger of Canadian Breweries with Canada Bud, O'Keefe and Cosgrave did not materialize in the manner contemplated at that time, it may be noted that Canadian Breweries ultimately acquired each of these three companies, over a period of some years, and that it also acquired all but 3 of those listed above as troublesome firms. Exceptions were Copland, which was later acquired by Labatt's, and Formosa, the only independent brewery still operating in Southern Ontario, and Perth, which was closed in 1950.

In a letter marked "STRICTLY CONFIDENTIAL", and addressed to Mr. Russel Forgan, of Field Glore & Company, of Chicago, Illinois, written on January 27, 1933, Mr. Taylor outlined another plan whereby Canadian Breweries would acquire four substantial competitors doing together 30% of the total volume of business in the province. Referring to a group of 21 competitors as the "D Companies", he stated:

"The second advantage is that with groups 'A' and 'B' consolidated and provided with ample working capital, all of the group 'D' companies could be compelled to consolidate with groups 'A' and 'B' or else could be forced out of business."

The necessity for Canadian Breweries of securing the "power to dominate the industry" was once more asserted by Mr. Taylor, in a letter dated December 26, 1933, addressed to the directors of the Company, wherein he proposed a series of alternative plans to settle the arrears of dividends on the preference shares:

"In order to ensure stability of earning power for our company following the change in the law, it appears advisable to do everything possible to consummate the acquisition of control of a few key companies now, which will give us with what we already possess, the power to practically dominate the industry and dictate its policies."

He made a similar reference in a letter of January 8, 1934, to Major J. A. MacDonald, of London, England. After having discussed the imminent acquisition of Cosgrave and the plans in preparation for the acquisition of O'Keefe's and Canada Bud, he drew the following conclusion:

"When all this is completed we will dominate the industry and our plans formulated four years ago [will be] fulfilled."

Reporting on the offer made to the shareholders of Canada Bud Breweries Limited and the additional influence that the eventual acquisition of that Company was to give to Canadian Breweries, Mr. Taylor wrote to Major MacDonald on May 22, 1934:

"With the acquisition of Canada Bud our whole program will be completed, except for the gradual closing of fourteen or fifteen small breweries still in operation. We do not intend to hurry about negotiating with them as we feel that under the new law they will be even more handicapped than under the present law and that one by one they will fall into our hands over the next three or four years.

. . .

I am sure that we now have the power to control prices and sales practices of the industry and while it may be necessary for us to start local price wars here and there to discipline a small competitor, I am sure the profits will prove most gratifying to the shareholders."

Discussing again the necessity of acquiring Canada Bud, in a letter to Mr. Prichard, dated November 8, 1935, Mr. Taylor referred to that Company as being "a most aggressive competitor", also operating another plant, the City Club Brewery. Mr. Taylor went on to say:

"Just as soon as we obtain a sufficient foothold in Canada Bud we can close the City Club plant, which should have the immediate effect of increasing the profits of our other Toronto breweries by not less than \$100,000 per year."

Writing again to Mr. Prichard on December 6, 1935, he discussed the matter of the financing of the acquisition of sufficient shares of Canada Bud to obtain control and stated:

"The Directors are all most anxious to see the Company in a position which will enable it to proceed with the program of elimination of competition and reduction of plants in Ontario by further consolidation and acquisitions. It is realized that no new commitments can be taken until such time as the refunding of the debentures and notes, which mature on April 1st next, has been arranged."

Speaking of the advantage for Canadian Breweries of now becoming a national institution, Mr. Taylor wrote to Mr. J. A. McDougald, of Toronto, on April 26, 1943, and reviewed the situation as follows:

"Canadian Breweries Limited was originally formed to constitute a strong brewing company in the Province of Ontario, built up from numerous fairly large and small brewing companies of which there were altogether too many in the Province. In the main this task has been completed but there are still three or four companies which could be profitably acquired and, in addition to the replacement of the Ottawa brewery, a bit more has to be done to improve and increase the capacity of our other plants over and above that which can be financed out of our depreciation reserves. Moreover, having been successful in Ontario, we have now raised our sights and plan to repeat the process in the 4 Western Provinces so that we will become a truly national concern."

Between October 26, 1942, and April 30, 1945, Mr. Taylor prepared for the Board of Directors of Canadian Breweries a memorandum in the form of a five year plan and six successive revisions thereof, the last one being entitled: "CANADIAN BREWERIES LIMITED - SEVENTH REVISED - FIVE YEAR PLAN". Each of the six last plans is drafted after the original one, gives the same items of information, but is brought up-to-date. The introductory part of each plan purports to list the principal factors which have brought the Company "to its present position" and, among those, items 2 and 5 refer to the concentration of business and to the reduction in number of brands. Then the program of plant improvements and extension is discussed, including proposed acquisitions of new companies in Ontario and development outside the province. The plan then discusses suggestions with respect to the means to be taken

for the purpose of financing the projects of the Company. Follows a list of the estimated expenditures to be made "in order to carry out the plan over a five year period"; this includes provision for the acquisition of Ontario competitors and for the acquisition of "certain Western companies".

The original plan refers to the already achieved "concentration of the business and goodwill of 17 companies operating in Ontario into 6 companies", and informs the Directors that there has been a "reduction in the number of brands offered for sale from over 150 to 19 brands (with emphasis now on only 7 brands)". In the Seventh Revised Plan, with respect to "concentration", it is stated that 20 companies have been merged "into 4 companies, utilizing 9 plants", and it is added that the number of brands has actually been reduced from 150 to 7. (It is to be noted that, by 1952, 2 brands had been added or restored and there were 9 brands on sale by Canadian Breweries Limited).

The original plan stated that "it may also prove desirable to -

1. Completely solidify the Company's position in Ontario by the acquisition of most of the remaining smaller companies in southern Ontario."

These were listed as Blue Top, Copland, Bixel, Walkerville and Formosa and it was suggested that provision be made for funds in the order of \$3 millions for the purpose of these acquisitions. Further acquisitions in Western Canada were recommended, with provision for another \$3 millions to be made.

In the Seventh Revised Plan, the companies still proposed to be acquired were Blue Top, Copland, Formosa and Perth, with a suggested provision of \$2,250,000 for this purpose, and it was stated that \$8 millions should be raised to acquire Western Breweries Limited, Northwest Brewing Company Limited and Brewers & Distillers of Vancouver, Limited, in Western Canada.

The original plan contains the following statement which indicates an intention to make sure that the companies absorbed should definitely be eliminated:

"It has been intimated to us by the Federal Administrator of Alcoholic Beverages, appointed under the Wartime Prices and Trade Act, that as a war measure certain concentration of production in the brewing industry is inevitable during 1943. This may afford us the opportunity to pick up certain other Ontario Companies. It would be much more satisfactory to acquire them outright rather than to be obliged to compensate them in a way that might enable them to reopen after the war."

(b) Statements and Attitudes of Other Interested Persons

These statements made by Mr. Taylor to Directors of the Company and other persons interested financially in the enterprise, throughout the period since the incorporation of Canadian Breweries in 1930, are of importance, in that they necessarily serve to interpret and explain the acts and the attitude of the Company throughout the period.

In our opinion, it may not be validly argued, as was suggested to us at the hearing, that the facts as we find them today and the situation as it now exists must speak for themselves and that the conduct of the Company and its officers in the course of the development and evolution of the enterprise may not be examined in the light of the statements of one individual, Mr. Taylor. It must be remembered that Mr. Taylor, since the very beginning of Canadian Breweries, has always been the principal representative and agent of the Company, fully entrusted with the administration of its affairs and the carrying out of its policies and plans. That these statements of the President and General Manager of the Company must, of necessity, reflect the attitude of the Company itself, is further confirmed and made more evident by the fact that, in the course of the whole period, all these statements having been made in correspondence with either Directors of the Company or other persons financially interested in the carrying out of its purposes, there appears to be no indication in answers to Mr. Taylor's letters that any of these persons either objected to or dissented from the policies outlined or did not agree with the need for carrying them out.

Positive statements, similar to those of Mr. Taylor, were also made by other interested persons, which clearly confirm that it was part of the Company's plan to eliminate competition, in order to foster the success of its own operations. For instance, the matter of the consolidation engaged in by Canadian Breweries was commented on as follows by Major J. A. MacDonald, Chairman of Canadian Banking & Trust Limited of London, England, who was one of the persons looking after the British interests in Canadian Breweries, in a letter to Mr. E. P. Taylor dated January 26, 1934:

"It is most pleasing to observe the manner in which you are carrying through the final stages of consolidation and preparing for development on a grand scale as soon as legislation permits of a saner policy concerning the distribution and consumption of beer in Ontario."

Mr. E. T. Sandell, who was President of Taylor & Bate Limited of St. Catharines in 1934, was a Director of Canadian Breweries from 1930 to 1934 and from 1937 to 1943. He had been entrusted with the purchasing of Welland Brewery Limited, for the account of Canadian Breweries. In a letter to the Chief

Commissioner of the Liquor Control Board of Ontario, written on February 15, 1934, he stated that the Board should waive any claim for licence fee from the date he assumed ownership of that brewery. In support of that request, he stated that he would undertake to cease operation of the brewery. In this letter, he commented as follows:

"If I am successful in completing this purchase it is my intention to immediately cease operation, and destroy all the beer stock on hand in the brewery, as well as have all stock on hand in the ten warehouses, through which they are selling, returned to the brewery for destruction. I also intend to dismantle the plant and make arrangements if at all possible to dispose of it in the United States."

In another letter to Mr. Taylor, dated May 10, 1934, Major MacDonald stated his pleasure at the success of the carrying out of the plan:

"The last campaign ending in the purchase of O'Keefe's was a great performance, and says much for the splendid team work of yourself and the three groups over here. Your quick understanding of the situations as they presented themselves and your prompt response in meeting our needs, made the job infinitely easier than it would have been in ordinary circumstances, being so far apart."

Writing again to Mr. Taylor on June 18, 1934, Major MacDonald referred as follows to the question of the attempt to obtain control of Canada Bud:

"I hope you have accomplished what you set out to do in your battle for control of Canada Bud.

. . .

If by any chance you have not succeeded in getting control, it seems to me that a position could be created in competition with Canada Bud, whereby you would a little later on make an offer at a lesser price and use the difference to fight them.

I agree with you that it would be most desirable to have this company, managed as it is, out of the way, and it would certainly be in the best interests of their shareholders, if only they had the common sense to see it."

Mr. John A. Paul, a stockbroker of Glasgow, Scotland, and connected with the London Committee, wrote to Mr. Taylor on August 15, 1938, to discuss the possibility of acquiring Labatt's. It will be noted by the following excerpts from his letter that the people concerned with Canadian Breweries, both in Canada and abroad,

considered the closure and disposal of acquired plants as a method well within the framework of the scheme. It will also be noted that, although Mr. Paul was in favour of delaying the acquisition of Labatt's, he felt, just the same, that this attitude had some unprofitable aspects:

"Have you been able to sell any of the closed down breweries? Do you consider that the valuation of the plants, less the depreciation reserve and surplus is now on the Balance Sheet at a reasonable figure?

. . .

Have you considered closing Cosgrave and either Regal or Kuntz and if you get control of Reinhardt's do you intend to close that?

. . .

The only snag it seems to me in adopting a waiting policy is that your hopes of future increased profits may not materialise and that the longer competition goes on, the more good money is being thrown down the drain on sales promotion.

. . .

If, in the end, we are successful in buying Labatt you would then, I think, with your Quebec business have a very good lever to go to National and Molson and suggest that they should withdraw from Ontario and that you would withdraw from Quebec thereby making considerable savings for both groups."

(c) Methods Adopted by Canadian Breweries in
Effecting Acquisitions

In so far as they express deliberate intent on the part of Canadian Breweries to eliminate competition from the market, so that Labatt's and Molson's would remain as its sole real competitors in Ontario and Quebec, the foregoing statements are, in our opinion, corroborated by the methods adopted by the Company for the purpose of effecting its many mergers. The incidence of these successive acquisitions on the public interest will be dealt with later in this report. It will be sufficient to note here that, in our opinion, the record indicates that these mergers were not entered into at the instance of the companies acquired. Nor may it be said that these were cases where the common interest of both parties dictated their joint desire to get together for the purpose of completing their respective operations and putting to common use their facilities,

know-how and goodwill. Rather it appears that, throughout the whole period, the desire for mergers has been unilateral, the whole process being pursued in furtherance of Canadian Breweries' intention to eliminate competitors in order to secure for itself the profits to be derived from unhampered access to the consumer.

For example, in some cases, the Company having fixed its sights on a particular brewing corporation, found it necessary to vary, renew and repeat its offers persistently before finally acquiring either share control or the assets of the company. In many cases, the original offers were greatly increased in the course of discussions, and the record shows that some companies were acquired at prices which were largely in excess of their actual value. In other cases, Canadian Breweries began by buying shares on the open market and then sought to secure the Directors' agreement to the proposed merger. If this approach failed a direct appeal to the Company's shareholders was made, against the judgment or advice of their Directors, and in this way control of the majority holdings was finally obtained. Another means which was resorted to on one or two occasions for the purpose of acquiring a competitor was the buying up of mortgage bonds with respect to which the Company was already in default, and then foreclosing against the Company. Finally it must be said that the frequency with which plants were closed after they had been purchased at a substantial cost is very strong evidence that the real objective was not the normal benefits to be gained from combining the assets and market advantages of the acquiring and acquired companies, but simply the elimination and destruction of a competitor.

Without going through the details of each merger, we now propose to make a brief review of the circumstances of certain of the acquisitions, so as to illustrate the foregoing conclusion.

Carling Breweries Limited, London

Canadian Breweries began to be interested in Carling Breweries Limited early in 1930 and before the end of the year control had been acquired. At that time, according to a statement of the Director of Investigation and Research which has not been challenged by the Company, Carling's shares on the market were selling for about \$2 to \$3. In order to obtain 60,000 shares in the hands of the Dominion Bank and 10,000 shares in the hands of Messrs. Low, Leon and Burns, the Company agreed to pay \$10 per share, i.e., a total sum of \$700 thousands, which apparently represented some \$490 thousands in excess of the maximum market value of the shares. The remaining shares necessary to obtain control were acquired apparently by means of an exchange of Canadian Breweries' stock for Carling's stock.

It must be said, however, that this Company, although very weak at the time and financially much embarrassed, was strategically located and in the following years proved to be of immense service to Canadian Breweries.

Cosgrave Brewery, Toronto

Between 1930 and 1934, Canadian Breweries, in order to acquire that Company, purchased shares of Cosgrave Brewery on the open market at intervals and made successive offers to shareholders to exchange Canadian Breweries shares for Cosgrave shares which would have given control. On January 14, 1931, a letter was written to Mr. Cosgrave, the President of the Company, by Messrs. Taylor and Jennison, reminding him of the preceding discussions concerning possible amalgamation of Cosgrave with Canadian Breweries. They asserted that the costs of production and financial position of Canadian Breweries were now such that "it could meet a price war at any time, and outlive practically all but a very few competitors. It could afford to sell its products at a price for a year, which would either cause the failure or seriously cripple all but a very few of its competitors in the Province of Ontario."

As far as the exchange value offered for Cosgrave shares was concerned, the following offers were successively made by Canadian Breweries:

- (a) March 25, 1930: 1 preferred and 1 common share of Canadian Breweries for each 10 shares of Cosgrave Export Brewery;
- (b) January 15, 1931: 1 preferred and 2 common shares of Canadian Breweries for each 10 shares of Cosgrave Export Brewery;
- (c) June, 1933: 2 preferred and 2 common shares of Canadian Breweries for each 10 shares of Cosgrave Export Brewery;
- (d) July, 1933: 2 preferred and 2 common or 8 common shares of Canadian Breweries for each 10 shares of Cosgrave Export Brewery;
- (e) February 22, 1934: 10 common shares of Canadian Breweries for each 10 shares of Cosgrave.

It should be noted that the Cosgrave Company proved to be an important unit in the Canadian Breweries group and that, although the name of Cosgrave disappeared in 1936, the plant is still in operation.

Riverside Brewing Corporation Limited, Riverside

Riverside Brewing Corporation Limited, which was at one time described by Mr. Taylor as "a thorn in the side of our British American plant", was the object of the attention of Canadian Breweries between 1930 and its acquisition in 1935. In a letter dated May 20, 1935, addressed to Mr. Prichard in London, England, Mr. Taylor stated that he did not see any development with respect to Riverside, for the moment, but that

"In my next letter to the Committee I will outline fully the situation in regard to this company and the benefits that would be derived from putting it out of business."

The price asked for their shares by the larger shareholders of the Company having been deemed too high, Canadian Breweries used a subsidiary, Industrial Assets Limited, to buy up first mortgage bonds of the Riverside Company, and thus was able eventually to obtain possession of the assets by foreclosure under the mortgage. The process followed is described thus in a document obtained from the files of Canadian Breweries Limited:

"In August, 1935, the Company entered into negotiations with the Dominion Bank for the acquisition of Riverside Brewing Corporation Limited of Riverside, Ontario. The Riverside Company was indebted to the Dominion Bank and had given as collateral \$72,500 principal amount of first mortgage bonds of that Company, and also an assignment of accounts receivable and security under Section 88 of the Bank Act. Canadian Breweries paid to the bank \$75,000 for its interest in the bonds and accounts receivable and in the goods covered by its Section 88 security. Canadian Breweries then foreclosed under the mortgage and thereby became the owners of the plant, equipment and inventory. These assets were eventually sold by Canadian Breweries, and the Company was wound up."

The Hofer Brewing Company Limited, La Salle

A rather unusual procedure was used for the acquisition of The Hofer Brewing Company Limited, located in La Salle and whose plant had a daily capacity of 2,400 cases of beer. In 1939, Canadian Breweries obtained control of Hofer Brewing through the purchase of 16,604 shares out of a total issued number of 18,200, at a price of \$1 per share. At the same time, Canadian Breweries bought most of the first mortgage bonds of Hofer at par from the bondholders. Although in possession of full control of the shares, Canadian Breweries used its position as bondholder, in October, 1939, to foreclose on the mortgage and to have a Receiver appointed.

The plant was closed and the assets were later sold.

Welland Brewery Limited, Welland

This brewery was bought by Canadian Breweries Limited, through Mr. E. T. Sandell, then President of Taylor & Bate, acting as agent for Canadian Breweries. In a letter to Mr. Prichard of the London Committee, dated June 30, 1937, Mr. Taylor reminded him that this plant had been acquired for the purpose of being closed and that Mr. Sandell, although he had no written contract, should be reimbursed for the loss of \$8 thousands which he had incurred in connection with the purchase of the Brewery. This loss represented the difference between the cost of acquisition, namely, \$35 thousands and the proceeds of the liquidation of the assets, viz., \$27 thousands.

Bixel Brewing & Malting Company Limited, Brantford

In March, 1944, Canadian Breweries bought, for a total sum of \$100 thousands, all of the issued stock of Bixel Brewing & Malting Company Limited, about which Mr. Taylor had once pointed out that the only value it had for Canadian Breweries was "its nuisance value". The plant was closed, the operations were transferred for some time to Carling's and the Bixel brands were finally withdrawn from the market. The eventual disposal of the assets had been forecast by Mr. Taylor, in a letter to W. K. Fraser, K. C., of Toronto, dated February 18, 1944:

"As you know, it is our plan to scrap this brewery and to move such machinery as is of any value to one of our other plants and then sell the property for what it will bring, which will be purely a nominal amount. However Mr. Bixel should not be told that we are going to immediately close the brewery, as I have left him in some doubt as to that and I think it will make the closing easier if we do not talk about our future plans too much."

Canada Bud Breweries Limited, Toronto

On at least one occasion, when carrying on negotiations for the acquisition of a brewery, Mr. Taylor and his associates felt it necessary to secure market support for the shares of Canadian Breweries, during the period of the offer. This occasion occurred in 1934, when the Company was endeavouring to acquire the Canada Bud

Company. On May 29, 1934, Mr. Taylor wrote to Mr. Prichard of the London Committee, on the matter, as follows:

"We are making a special effort here to have several of our friends enter the market and buy common shares of Brewing Corporation between June 11th and June 14th, because we realize that quotations on our shares in relation to quotations on Canada Bud shares during the last few days of the term of the offer will constitute the greatest argument in our favor in the minds of the shareholders of Canada Bud Breweries Limited. If the Committee could arrange to have some of its friends enter the open market on each of these four days, it would help us very much indeed. We expect to accumulate orders of 5,000 to 10,000 shares here and if the Committee could also arrange that a position be taken to the extent of another 2,500 shares, I am sure that the results will be very gratifying.

It is my intention to telegraph the Committee in code within the next few days and to ask them to request the co-operation of Paul and MacDonald in the above matter."

On the same date, Mr. Taylor wrote to Major J. A. MacDonald, of Canadian Banking & Trust Limited, of London, England, stating:

"We have struck a snag, but not entirely unexpected, in connection with the proposed acquisition of control of Canada Bud Breweries Limited.

. . .

As you are well aware, it is very much in our interest to obtain control of Canada Bud as it has always proved a most difficult company to co-operate with and in the past we have found that they were the first to disregard any arrangement entered into by the brewers of Ontario for the elimination of bad practices and waste.

. . .

I am going to ask you, Paul and the Committee to again make an effort, like we are doing here, to put a substantial volume of orders into the market between June 11th and June 14th, as this is a critical period with reference to the Bud deal and the market quotations on our shares is of paramount importance to the success of the deal."

Having failed to secure the co-operation and recommendation of the Board of Directors of Canada Bud and of its President, Mr. Duncan McLaren, in relation to an offer for exchange of shares,

Canadian Breweries Limited decided, in May, 1934, to make the offer directly to the Canada Bud shareholders, without the sanction of their Directors. Thereupon, the President of the Company, Mr. McLaren, wrote to his shareholders advising them that neither he nor his Directors were in favour of the offer. Then, on May 28, Mr. Taylor wrote to the shareholders of Canada Bud stating that destructive competition had, in the past, impaired the prosperity of the industry and that "the competitive system of merchandising referred to in your President's letter has existed in the brewing industry of Ontario for several years, and we believe that this system has been responsible for millions of dollars in waste with consequent loss to shareholders". The letter went on to give instances of advantages to be derived from mergers.

A memorandum dated June 5, 1934, was prepared for the purpose of trying to persuade the shareholders of Canada Bud to agree to the merger. In this memorandum, 10 principal reasons were set out and discussed, for the purpose of showing why the shareholders of Canada Bud would find it more advantageous to become shareholders of Canadian Breweries. The first reason related to competition and it was said that promotional expenditures have "deprived shareholders of brewing companies of very large dividends which could have been paid to them had there been less competition and more co-operation in the industry". The document went on to discuss the dangers for Canada Bud of remaining independent and other reasons which made Canadian Breweries stock a secure investment.

National Breweries Limited, Montreal

It may be noted here that this device of referring directly to the shareholders and trying to persuade them to act against recommendations already made by their Board of Directors was later resorted to in the process of acquisition of National Breweries, after the President of that Company, Mr. Norman J. Dawes, and the Board of Directors had issued a specific recommendation to their shareholders not to accept the offer made by Canadian Breweries.

In a letter dated June 18, 1951, and addressed to Colonel Fraser Hadley, of Hull, Quebec, a Director of Canadian Breweries, Mr. Taylor commented on the matter as follows:

"In regard to our National negotiations we have by no means lost heart. Norman Dawes is putting up a tremendous fight for personal reasons and on account of prejudice. We are giving his board a last opportunity next week to endorse proposals. If they do not, we have decided to make our offer directly to the shareholders, and I feel confident that we will be successful in getting control, although we may have to wait until the Annual Meeting in April to enforce it."

2. In Relation to the Interest of the Public

Under our system of free economy, the public has a fundamental right to the preservation of free competition in the market or, as the Quebec Court of Appeals has put it, in *EDDY MATCH COMPANY v. THE QUEEN* (18 C.R. 357, at page 374) "everyone is entitled to the benefits that flow from free competition". As this Commission has often noted, any substantial interference with or limitation of competition, over an area of some importance in any trade, will normally be considered as an encroachment on this basic right and, consequently, as being detrimental to the public, or at least, as being likely to prove detrimental to the public.

A free market is one to which the right of access of new producers and distributors is not artificially interfered with, nor precluded. It is also one where the commercial activities of the many are not hampered by the deliberate and arbitrary attempt of the few to restrict competition, and where competitors, however small, are not harassed or driven out of the market as a result of the will of some operators to rid themselves of their unwelcome presence. Free competition therefore implies the safeguarding of the right of large and small concerns alike to share in the operations of the market and not to be deprived of that benefit by artificial or arbitrary means.

In relation to the consumer, free competition in the market means, among other advantages, a greater assurance of constantly improved quality of product, a more diversified range of products among which to make a choice according to individual taste, and the application of more realistic and more favourable standards of pricing. To the extent that successful attempts are made to restrict competition or to limit the number of competitors, in a way which is neither accidental nor occasional, the consumer public becomes deprived or is threatened with being deprived of one or more of the advantages inherent in our present system and for the preservation of which safeguards have been established under our laws.

True, it has been contended on the part of Canadian Breweries that, at the time when the original plan was devised and it was decided that means should be taken for the Company to obtain a dominant position within Ontario, the industry in that province was in a most deplorable state of affairs. The Company claimed, *inter alia*, that reprehensible methods of merchandising and of sales promotion were then used by a great number of manufacturers, especially those operating smaller units, that the market for brewery products was plagued with the activities of "runners" and "bootleggers", that unethical advertising practices were resorted to, that there was general over-capacity in relation to the rather limited scope of the market, that some of the breweries were operating under poor sanitary conditions, that in other cases quality of the product was

below acceptable standards and, finally, that many of the companies then in existence were in very precarious financial circumstances. This situation, it was stated to us, had to be corrected and the Company consequently undertook to bring the market back to more orderly conditions. In the process, it acquired 23 brewing companies in Southern Ontario, each operating one plant, closed down 12 of those plants and reduced the product brands from some 150 down to nine only. In other words, as a result of the carrying out of the Company's plan, the whole pattern of competition within the industry has been transformed to the personal likings and standards of Canadian Breweries Limited, leaving in existence today only two main producing competitors within the boundaries of Ontario, or three if Molson's is included.

It may well be that, around 1930 and for some years thereafter, conditions within the brewing industry in Ontario were unfavourable and even lamentable. It may also be that, at times, some interference with the normal pattern of competition is justified by the necessity of correcting certain unusual circumstances. But, should any such restriction of competition, general or otherwise, become necessary in exceptional cases, in the public interest, surely the extent of the limitation, as well as the decision as to what remedies should be applied, should not be left to individual citizens or to private companies. Since the remedies concerned are to be imposed by reason of a special need to protect and safeguard the public interest, it follows that such control as is required by the circumstances should be vested in some public authority, whose sole function and duty it is to act on behalf of the public, e.g., Parliament, the Government, or a public body appointed by or responsible to the representatives of the people. In no case should the regulations of the matter or the decisions involved rest with those who have a direct financial interest in the profits to be made from the sale of the commodity concerned. If one or more individual producers, engaged for their own benefit in the manufacture of a given commodity, were allowed full freedom to decide to what extent there should be competition and what the nature of such competition should be, in relation to the market for the said commodity, there would be great risk that his or their decision would be dictated primarily by the safeguarding of his or their own interest and by the desire to assure the financial success of his or their own enterprise. Consequently, action taken under such circumstances would be most likely to operate to the detriment or against the interest of the public.

Even from a purely economic or social point of view, it cannot be said that, at any time, Canadian Breweries Limited had any right to undertake to limit competition within Ontario, and, later, within Quebec, and certainly not in an arbitrary fashion, to an extent, by means and according to standards which it deemed convenient. In so doing, for the purpose of safeguarding its own interest, it deprived the public of much of its freedom to choose, and generally of all the

advantages which flow from the interplay so far as is possible in this industry, of the usual competitive factors. By so doing, it deprived the public of the latter's right that competition be not interfered with or restricted by artificial means and devices, but only as a consequence of circumstances inherent in the market.

It is true that each of the mergers concerned was made without apparent objections on the part of the Liquor Control Board in Ontario or the Liquor Commission in Quebec. It must be noted, however, that, although these bodies may have had the power - which question is not germane to this discussion - to enact and apply regulations the effect of which in fact would have been to restrict competition, these bodies never saw fit to enact any such regulations. As far as preventing mergers or objecting to mergers was concerned, one would hardly expect such provincial bodies to take upon themselves the responsibility of interfering for this purpose, even though they were constantly in close touch with what was going on within the industry. This would have meant entering into a field of authority altogether different from that which they were set up to administer.

Mergers and Modern Marketing

It was submitted to the Commission that, in the circumstances of modern business, there is a tendency for producers to become fewer and bigger, thus creating a situation where the public continues to benefit from keen competition between the few strong operators remaining in the field and is assured of greater efficiency and reduced costs in manufacturing and distribution. It was consequently alleged that, in planning and effecting the successive mergers involved here, Canadian Breweries merely acted in accordance with a now well-established and accepted principle of commercial development.

The Commission is aware that, for some decades, there has been a tendency for various kinds of producers to pool their resources, talents and efforts, in order to maintain or better their respective position on the market, or in order to meet effectively the competition of very large enterprises, which they could not successfully compete with individually. Each of these mergers or arrangements must be examined and studied in relation to its object and purpose, in order that its true nature and possible effects may be properly determined. If the purpose is not the achievement of greater security and greater efficiency, consistent with true competition, but rather the eventual control of the industry in order to foster only the personal and particular interest of the merging parties, then surely such mergers cannot claim to be in the public interest. According to the words of Mr. Justice Laliberté, of the Quebec Superior Court, in *REX v. CANADIAN IMPORT CO.* (1933) 61 C. C. C. 114, what is to be looked at and ascertained is "what the

thing was in essence that [the persons concerned] were seeking to accomplish".

We are of the opinion that, irrespective of eventual success or non-success, in terms of achievement of market domination, the mergers under examination here, from the point of view of their propriety in the public interest, must be judged in relation to the intent and purpose of Canadian Breweries in bringing them about. The evidence of record here tends to indicate that, even in the cases where the merger brought actual benefit to Canadian Breweries, in terms of available plant, equipment and other facilities, as well as know-how, the prime intent was to make sure that that competitor would be out of the way in the future. The very large sums paid for some of these breweries might well have been directed either to the erection of new plants or to the improvement of some of those already owned, if business efficiency or technical improvement had been the objective. As a condition of the effective carrying out of its own process of expansion, the Company preferred, in each case, to eliminate competition. The Company cannot invoke, in justification of its course of action, any need to raise itself to the financial strength or production level of powerful competitors, in order to meet their competition. As a matter of fact, quite early in the period during which most of these acquisitions were made, Canadian Breweries had already become the largest producer in the Ontario market.

In the case of most of the companies purchased in Ontario, the breweries so acquired could contribute nothing, and were not expected by Canadian Breweries to contribute anything, to the merger, in terms of brewing facilities, equipment, know-how or otherwise. The contribution which they were expected to make was in terms of their own destruction and disappearance from the market. Their plants were closed and either sold for other purposes than brewing, or dismantled. Their brands were taken off the market.

Prices

We have referred earlier in this report to the fact that the Director of Investigation and Research has admitted that, because of provincial controls, "the normal market forces which usually operate to determine the prices of other consumer goods are to a certain extent inoperative in the case of beer". We shall now discuss the question of price with greater particularity, first with respect to the situation in Ontario, and then with respect to Quebec and other provinces.

Ontario. In Ontario, the price of beer has always been subject to the approval of the Liquor Control Board. Until the end of 1950, it had always been understood by the trade that such approval was in the nature of a determination of fixed prices which must be

observed by the industry. In November, 1950, due to an intervention on the part of Canadian Breweries Limited, the Liquor Control Board made it clear that approved prices were merely maximum prices and that any manufacturer was free to sell his product at prices below the maximums so established.

It seems that the attitude of Canadian Breweries Limited with respect to prices has changed, throughout the years, according to the circumstances of the market and also according to the type of competition it had to meet from small or large competing manufacturers.

In the first years of the existence of the Company, Mr. Taylor was active in attempting to persuade the industry to adopt marketing standards which, in his opinion, were designed to eliminate unfair competition and sales practices. In July, 1934, after the amendments to the Liquor Control Act widening the scope of the market had come into effect, the brewing industry adopted a "Code of Ethics" which had been drawn up by Mr. Taylor. Item 1 of the agreement was as follows:

- "1. That no brewer shall directly or indirectly make any concession to any one, which would have the effect of reducing the price to the purchaser below the scale of prices set by Brewers' Warehousing Company Limited."

The Code was essentially directed against what would appear to be unfair practices in the proper sense of the term, but it also seems that the intention was that prices, once set through Brewers' Warehousing Company Limited and approved by the Liquor Control Board, were to be lived up to. This attitude of the industry seems to explain an action by the Board, in August, 1935, when the Chief Commissioner of the Ontario Liquor Control Board sent a telegram to all Ontario breweries, to three Quebec breweries and to one Manitoba brewery, in the following terms:

"Established prices of keg and bottled beer to Authority-Holders must be maintained stop Any violator of these instructions will be severely dealt with."

This was followed on the next day by a covering letter confirming the stand that the established prices had to be "maintained" strictly and that "failure to do so may result in suspension or cancellation of license".

From this moment, it became generally understood in the industry that approved prices were, in fact, fixed prices which had to be maintained. But it seems quite clear that the industry as such never lost its voice in the establishing of prices and that, in determining them, the Liquor Control Board never acted on its own motion, but rather on requests formulated by the trade, or at least after due

consultation with the brewers. In effect it was the brewers who decided what prices should be in force, and to this end, they acted collectively through their official selling agency, Brewers' Warehousing Company Limited. That brewers did participate in the determination of prices, and that prices were not merely imposed on them, is evidenced by the minutes of a meeting of the Brewers' Warehousing Company Limited, held at Toronto, on November 22, 1935, i.e., only three months after the telegram and letter above-mentioned had been sent by the Ontario Liquor Control Board advising the trade that prices had to be "maintained". At that meeting, it was resolved that the brewers could not agree to the request of the Chief Commissioner that the price of beer sold to clubs be increased. The relevant part of the minutes reads as follows:

"Mr. Isard announced at this time that he had received a message by telephone from the Chief Commissioner, requesting that the brewers consider increasing the price of beer sold to clubs, to the price in effect to home consumers. After consideration, it was felt that this request could not be acceded to and that the Manager should point out to Mr. Odette such action might endanger the result of the returned soldiers' vote in localities voting on local option. "

It is therefore evident that, even within the framework of necessary governmental approval and of rigid schedules of prices, the brewers themselves had a definite say in the pricing of beer. It must be noted that, under such a system, the number of competing manufacturing units in the market, which have to be consulted prior to the establishment of the price, becomes of importance, in so far as a substantial lack of unanimity is very likely to determine the liquor authority to decide against a proposed change. The more restricted the number of competitors, the easier it is for the industry as a whole to reach an agreement on prices on an arbitrary basis.

As early as August, 1934, when only a part of the consolidation planned by Canadian Breweries Limited had been accomplished, we find Huether Brewery complaining of the fact that, because "small breweries, of which there are now only a few left, are outvoted on any question or proposition which could be of any advantage to them as well as the general public", Brewers' Warehousing Company Limited had refused to handle that Company's new one-eighth keg, which Huether Brewery alleged made possible home consumption of draught beer at a relatively low price.

In 1939, Mr. Taylor tried to obtain a reduction in the price of bottled beer. In discussing the matter with persons interested in Canadian Breweries, he stated that, because of the unjustified difference between the price of draught beer and that of bottled beer, small operators were given the opportunity to compete unfairly by offering their beer at a reduced price, while still making a profit and that, as far as Labatt's was concerned, the high price of bottled

beer had allowed this large competitor to reap large profits, which in turn enabled it to engage in most expensive sales promotion activities. On May 31, 1939, Mr. Taylor wrote to Mr. Prichard to inform him of the steps being taken to bring about a reduction in beer prices and said:

"Let me first say that low prices have been consistently advocated by this Company ever since it was formed in 1930. The original plan on which we expected to build up a prosperous and successful Company involved, first of all, the elimination of surplus brewing capacity and concentration of volume into a few plants, and secondly, the encouragement of further volume by passing along to the consuming public savings, which would be made by lower costs resulting from greater volume and the elimination of wasteful sales promotion expenditure.

. . .

The prices now in effect have enabled the Labatt Company to set a standard of extremely high and wasteful expenditure on sales promotion activities, due to the fact that they have such a very large volume in one plant. On the other hand, small competitors have been sheltered by the high prices and have been able to remain in business through price cutting tactics. Canadian Breweries has been caught between the two kinds of competition, and has had to adopt some of the practices of the smaller Companies in order to hold volume, and on the other hand, has found it difficult to keep up with the expenditure of Labatt's sales representatives."

When the war broke out in September, 1939, prices had not yet been reduced, and reduction was made more difficult by increased tax rates then levied by the federal and provincial governments in order to raise revenue to meet new requirements. These increased taxes raised the cost of producing beer by approximately 10¢ per gallon. Mr. Taylor advocated absorbing the tax increases and leaving beer prices at their then current levels. However, he did not receive the support of the industry in this respect and, on December 1, 1939, a new schedule of prices incorporating about 80% of the tax increase went into effect.

On one occasion Canadian Breweries did reduce the price of its brands of beer to the licensees. This was on November 4, 1950, after it had been the victim of rumours alleged to have originated from some competitors, to the effect that Canadian Breweries had been responsible for price increases which had been put into effect on September 18 of that year. In fact, the price of beer in Ontario had been generally increased on that date to offset increases in the federal tax on malt and in other operating costs. As a result of these rumours, Canadian Breweries was the object of a virtual boycott by the hotel operators and licensees of the province. Thereupon,

Canadian Breweries resigned from membership in the Ontario Brewers' Association and questioned the right of Brewers' Warehousing Company Limited to obtain from the Liquor Control Board approval of prices which must be uniformly maintained.

On October 23, 1950, it notified the Ontario Hotel Association of its intention to request permission to reduce its price of half barrels by \$1 and offered to undertake a discussion of a price reduction on bottled beer. It advised all licensees that, as of November 4, 1950, its new reduced prices would come into effect. Brewers' Warehousing Company Limited decided to obtain legal advice, with respect to the attitude it should take concerning prices, in the light of the Combines Investigation Act. A conversation with the Chief Commissioner of the Ontario Liquor Control Board is referred to by Mr. R. W. Hillmer, of the Brewers' Warehousing Company Limited, in a letter dated November 10, 1950, addressed to the Chief Commissioner:

"The instructions received from the Chief Commissioner were that the price established on September 18th was a maximum and, if any Brewer proposed to reduce prices below the said maximum, it was a matter for the individual Brewer and not for the Liquor Control Board.

2. The Board of Directors [of Brewers' Warehousing Company Limited] - after hearing that the Liquor Control Board did not intend to set a price now, and after receiving an explanation of the Company's position in this matter from solicitors present at the meeting - decided that the reductions announced by the individual Brewers must be accepted by the Company and placed in effect."

On November 8, 1950, all brewers decided to adopt the Canadian Breweries prices, effective November 3, 1950.

At a meeting held by the Directors of Brewers' Warehousing Company Limited, on November 15, 1950, the following decision was taken:

"The directors unanimously approved the suggestion that the President endeavour to secure a letter from the Chief Commissioner to the effect that the prices placed in effect September 18, 1950, were maximum prices, and that there was no violation of the Liquor Control Act by any brewer selling at a lesser price."

As far as prices are concerned, it does not appear from the foregoing examples, that Canadian Breweries Limited has, in fact, exercised on the market a definite influence in any particular direction. At times, its attitude was that prices should be adhered to and should not be reduced, either by means of rebates, discounts,

or otherwise. At other times, it agreed to certain standard prices along with the other brewers, through the medium of the Brewers' Warehousing Company Limited. Finally, in one instance in 1950, its influence was decisive in causing a reduction of the price of beer.

The fact remains, however, that the pattern of competition has been transformed to such a degree, between 1930 and 1953, as a result of the activities of Canadian Breweries and its representatives, that one is not in a position to judge, even approximately, what the trend of prices would now be, had competition been allowed to follow a normal course of evolution, irrespective of whether the actual number of producing units had decreased or not. (It seems to be clear that since 1950, when the ruling of the Liquor Control Board that approved prices were maximum prices only, restored to manufacturers full freedom to establish their own prices below those approved by the Liquor Control Board, the drastic reduction in the number of companies, to a mere two or three competitors, now deprives the public of the beneficial effects which might formerly be expected to flow from the truly competitive activities of the larger number of manufacturers then in business.)

Quebec and the Other Provinces. In the Province of Quebec, it would appear that the small number of competing breweries, significantly reduced by the acquisition of National Breweries Limited by Canadian Breweries, is likely to have a similar effect. As indicated earlier in this report, prices are first discussed and accepted by the brewers, the Hotel Keepers' Association and an association representing the licensed grocers, depending upon the level of distribution, before being finally approved by the Liquor Commission.

In the Western Provinces, it would appear that control of prices by the government authorities is more complete and that there is therefore less opportunity for the manufacturers to exercise any direct voice in setting the level of prices.

Reduction of Brands and Manufacturers

Aside altogether from the question of prices, one of the main advantages of competition for the consumer public is the availability of as wide a range of products and brands as possible among which to effect a choice.

The rivalry between the manufacturers of various brands is an incentive to maintain quality at its highest possible level, in order to obtain the consumer's favour. Furthermore, in the field of food products, the question of the individual tastes and likings of the consumer is probably more important than in any other commercial field, so that a variety of brands, perhaps reflecting only minute

differences, in either the raw materials used, the proportions thereof, or the processes of fabrication, becomes one of the most significant features of the market, as far as the consumer is concerned.

According to Mr. Taylor, at the time when Canadian Breweries was incorporated, the breweries which were later integrated within the consolidation were producing more than 150 different brands of beers of all types. In Ontario, after the 23 brewing companies integrated within Canadian Breweries had been acquired, the number of brands retained on the market was ultimately reduced to nine only. When National Breweries was also acquired by the Company, four additional brands were added to those in production by Canadian Breweries.

It would seem that the importance of variety and choice of brands for the consumer has been fully recognized by the Directors and officers of Canadian Breweries. Some time after the 1934 amendments to the liquor laws of Ontario, when the number of legal outlets was increased substantially, the Company published a prospectus listing the names of its ten subsidiaries which were then in operation. The document contains photographs showing the various brands of different types of beer produced by each of the ten companies, comprising in all, 34 brands. Much importance is given, in it, to the history of each company, to the nature and quality of the product respectively represented by each brand, and to the length of time it had been on the market, and reference was made to the consumer's demand therefor. The document states, for instance:

"The brand names controlled by these breweries have in the majority of cases, been before the Canadian public for two or three generations. One of the companies has been in successful operation for exactly 100 years. Two others were founded in 1840. One dates back to 1842, another to 1863, another to 1865, two to 1875, one to 1882 and one to 1925. The quality of the products and the reputation of the brands have been consistently maintained."

At that time, only 12 brewing companies had been acquired, two plants had been closed by Canadian Breweries and the others were still in operation. The fact that, so long as it had to face the competition of the 11 other breweries not yet acquired, Canadian Breweries realized that it could not satisfy the needs of the public unless it kept these well-known and popular brands on the market, is a clear indication that, when, after completing its mergers, the Company made a drastic reduction in the number of brands of beer it would thenceforth make available to the public, by that act it deprived the public of something in which the latter had a definite interest, bearing in mind particularly the nature of the commodity.

In any line of the food business, a similar reduction in the number of the brands of a given product available to the consumer would normally be deemed a loss to the latter and, most certainly would not be considered in his interest. Beer, particularly, appears to be a product in respect of which the personal experience of the brewer, the tradition associated with his product, and other factors make for noticeable differences between the diverse brands, which differences may be of more or less importance to the consumer, according to the latter's prejudice or individual taste.

A marked reduction in available brands is of greater consequence, when it has not been brought about by accidental or inevitable causes arising from the normal interplay of the factors of competition, but rather has resulted solely from unilateral decisions taken by one single company to suit its own individual interest. It is therefore our opinion that, by deciding to withdraw and actually withdrawing from the public a very great number of brands of beer theretofore available to the consumer, the Company, for its own purposes and advantage, acted in a manner which was not in the interest of the public. We should not, however, be understood to imply that the quality of the products presently offered to the trade by this Company are inferior in any respect. The evidence is all to the contrary and we are satisfied that every effort is made to ensure that the brands which it still produces and offers to the public are of the highest possible quality.

CHAPTER XI

SITUATION OF CANADIAN BREWERIES LIMITED WITH RESPECT TO CONTROL OF THE INDUSTRY

In Section 3 of the allegations of detriment formulated by the Director of Investigation and Research, and reproduced in the introductory part of this report, it is specifically alleged that Canadian Breweries Limited is a combine by way of merger, trust or monopoly, under Section 2(e)(ii) of the Combines Investigation Act. In other words, it is alleged that the Company is presently in substantial or complete control of the brewing industry, either throughout a particular area or district in Canada or throughout Canada, in a manner which has operated or is likely to operate to the detriment or against the interest of the public.

It is not our intention and we do not deem it to be within the purview of our functions to attempt to delineate here the characteristics and conditions which, from a strictly legal point of view, distinguish cases falling under sub-paragraph (i) from those falling under sub-paragraph (ii) of Section 2(e) of the Combines Investigation Act. Just as we did earlier in this report, with respect to the various acquisitions of brewing companies effected by Canadian Breweries in the course of the period under study, we propose to examine the merits of this allegation strictly from the point of view of the present status of Canadian Breweries within the structure of the brewing industry in Canada and from the point of view of the public interest.

Even if a company or a group of companies has deliberately set out to acquire a dominant position in the market for the product it manufactures and even if, pursuant to that intent, it has utilized methods and brought about results which were detrimental to and against the interest of the public, we cannot, ipso facto, conclude that such company or group of companies has achieved a position of substantial or complete control of the class or species of business in which it is engaged, to the prejudice of the public. It may well be that a merger or a series of mergers and acquisitions has not succeeded in gaining for those responsible therefor such a control over the industry as may be said to be against the public interest, even though, because of the circumstances in which it was effected, because of the intent of the parties involved and because also of the means employed, such merger or series of mergers and acquisitions is itself objectionable.

It seems to be generally agreed that control of this nature will not be deemed to exist unless the parties charged with monopolizing are actually in a position to control market prices or exclude competition. Thus the question becomes one depending on the facts and circumstances of the particular case, which may vary with each industry and also with each group of operators within any given industry. There do not appear to be any precise and fixed guides which may be applied for the purpose of measuring the extent of the control.

As has often been stated, in one set of circumstances, a very substantial percentage share of the whole business of a country or of an area of a country may well correspond to a lesser degree of control over the industry on the part of the company enjoying such share of the market. In another set of circumstances a company may well enjoy a lower percentage of the entire business but, at the same time, exercise a greater degree of control over the industry. In our opinion, it was rightly stated, in the American case of UNITED STATES v. COLUMBIA STEEL COMPANY (334 U.S. 495, 528), in 1948 that:

"The relative effect of percentage command of a market varies with the setting in which that factor is placed."

In trying to evaluate or judge the present market position of Canadian Breweries Limited, against the background of the structure of the whole industry as we find it today, the Commission does not agree with the contention that the Company is now in control of the brewing industry, either substantially or completely, throughout Canada or any representative region or district thereof. We have come to this conclusion after a thorough review of the situation, in the light of the figures submitted to us and also of the facts in evidence, and after examining that evidence from the point of view of determining the question of control of the industry either within any province or in Canada as a whole. The general picture of the industry, in terms of figures and percentages, production, capacity and sales, has been discussed in earlier chapters of this report. With that picture as background we shall now discuss the situation in respect of industry control in various parts of Canada and in Canada generally. We shall then make some reference to the external operations of Canadian Breweries, in the United States and in the United Kingdom, concerning which some comments were made in the Statement of Evidence.

(a) Maritime Provinces

We wish to refer to the situation in the Maritime Provinces, chiefly for the purpose of completing the record with respect to the picture for the whole of Canada, because there is no indication that, with respect to these provinces, Canadian Breweries

has ever attempted to control or monopolize the brewing market or that it has in fact controlled or monopolized it.

On April 26, 1943, Mr. E. P. Taylor wrote to Mr. J. A. McDougald, of Toronto, discussing generally the affairs and plans of the Company. Although, since that date, Canadian Breweries has acquired an important former Quebec competitor in National Breweries, we believe that the statement which he then made remains true, in respect of the Maritime Provinces:

"At the present time we supply Quebec and the Maritime Provinces from our bottling plant in Montreal. As there are not too many breweries in that part of the country, we have no major plans for that territory. We will simply add a bit to the size of our Montreal plant and hope to increase our share of the business in the East in future years."

At the time of the hearing, there still appeared to be a substantial number of brewing establishments in the Maritime Provinces, in relation to the population of the area. There were then seven breweries in operation, viz., three in Newfoundland, two in Nova Scotia and two in New Brunswick, all of which would seem to still be in existence and in none of which has it been established that Canadian Breweries has a financial interest. It would seem that the Company still continues to do business there from its Quebec and Ontario plants, in a manner which is truly competitive with the other establishments.

(b) Ontario and Quebec

For the purpose of determining the position of Canadian Breweries with respect to control, the Province of Ontario and the Province of Quebec may be considered together. Although the original plan with respect to acquisition of brewing companies affected the Province of Ontario only, and although the carrying out of that plan was for many years confined to that province, the fact that Canadian Breweries has acquired control of National Breweries of Montreal, in 1952, has rendered the present pattern of competition substantially the same in both these provinces. As a matter of fact, the only real competitors of Canadian Breweries, both in Ontario and in Quebec, are Labatt's and Molson's, each presently producing in one province, but both doing business in each of the two provinces, and furthermore each having a plant under construction in the province in which it does not yet carry on brewing operations.

Comparative figures with respect to capacity, production and sales in Ontario and Quebec and also in Canada for the year 1952, in terms of percentage, as well as actual capacity, production and sales figures (in barrels or gallons) in Canada for the years 1953 and

1954, are recited and set out in Chapter VII of this report.

For the Province of Ontario, in 1952, with Canadian Breweries and Labatt's as producers and Molson's limited to sales in the province, the two first Companies accounted respectively for 69.3% and 25.6% of brewing capacity, and for 68.7% and 27.1% of total production within the province. In that year, 64.2% of the total sales were made by Canadian Breweries, 22.8% by Labatt's and 8.6% by Molson's.

In the Province of Quebec, for the year 1952, Canadian Breweries and Molson's being producers and Labatt's being limited to sales within the province, Canadian Breweries accounted for 44.8% of capacity, and for 36% of the production, whereas Molson's accounted for 55.2% of capacity and 64% of production. 41.9% of total sales were made by Canadian Breweries (including imports from its Ontario plants), 54.7% by Molson's and 3.1% by Labatt's.

Taking Ontario and Quebec as a single district, capacity, production and sales were accounted for as follows by the three Companies:

	<u>Capacity</u>	<u>Production</u>	<u>Sales</u>
Canadian Breweries	57.7	54.4	54.6
Molson's	26.2	28.0	28.5
Labatt's	13.5	15.2	14.3

We have no percentage figures for capacity, production and sales in Ontario and Quebec for the years 1953 and 1954 but, on the basis of the figures of total production and sales of the companies concerned, for the whole of Canada, for the years 1953 and 1954, it may safely be assumed that the over-all percentage of Ontario and Quebec production and sales, in the case of Molson's and Labatt's, has slightly decreased and that of Canadian Breweries has slightly increased.

Irrespective of the fact that Canadian Breweries enjoys more than 60% of capacity, production and sales in Ontario and more than 50% in Ontario and Quebec together, we are of the opinion that this Company has not, at least in the present circumstances of the market, effective control over the determination of prices and over the pattern of competition now existing. Labatt's and Molson's, in view of their past history and of the nature and extent of their present operations, are, in our opinion, very strong competitors of Canadian Breweries Limited. They have both expanded greatly through the years and their operations have been and are highly profitable. They are further improving their position at the present time by the construction of large new brewing plants, Molson's in Toronto, and Labatt's in Montreal. No evidence was adduced to suggest and there seems no reason to believe that they are not strong enough to withstand either pressure or influence to conform to Canadian Breweries' policies.

Even in the event of an extensive price war breaking out in the brewing industry, there is nothing to indicate that they would be unable to hold their own. So far as the record goes they have acted quite independently of Canadian Breweries. No doubt they have participated in Ontario in the deliberations of Brewers' Warehousing Company Limited concerning price and other matters and in Quebec they have participated in similar discussions with other members of the Quebec Brewers' Association. There is, however, no evidence that in decisions reached in those organizations they were dominated by Canadian Breweries.

In Ontario, it should be remembered that, around 1934, at the time when the merger with Reinhardt, Cosgrave and Canada Bud Breweries was being pressed, there were discussions among several persons who may be described as promoters of Canadian Breweries, with respect to the eventual acquisition of Labatt's and also with respect to the possibility of Canadian Breweries and Labatt's getting together for the purpose of controlling certain competing brewing companies. The record does not show to what extent if at all any attempts in either of these directions were actually made. In any event, nothing material developed from either suggestion.

It will also be remembered that, although the original plans of Canadian Breweries involved the eventual acquisition of Copland Brewing Company Limited of Toronto, which, in 1930, had a capacity of 100 thousand gallons per annum, and although between the date of its incorporation and the year 1946, Canadian Breweries made repeated attempts at obtaining the ownership or control of this brewing Company, its efforts met with no success, and Copland Brewery was finally purchased by John Labatt Limited and is now being operated under the Labatt name. The last offer made by Canadian Breweries for the purchase of the outstanding Copland stock was for an aggregate sum of \$555 thousands. On May 15, 1946, Mr. Taylor found it necessary to write to Mr. Prichard of the London Committee, stating that Labatt's had offered and paid "a somewhat higher price than we offered and will be able to squeeze some more production out of it". It is interesting to note that, in Western Canada, John Labatt Limited have obtained control of the Shea group of brewing companies, which, in 1952, accounted for 52.8% of the total sales of beer in the Province of Manitoba.

One must add as a further consideration, in judging the respective positions of Canadian Breweries and Labatt's as competitors in the Provinces of Ontario and Quebec, the fact that Labatt's are now in the process of constructing a plant in Montreal, which is expected to operate in 1956, with an estimated capacity of 230 thousand barrels per year. This will, of course, considerably increase the local competition of Molson's and Labatt's against Canadian Breweries in Quebec, more particularly since sales of Labatt's in that province will no longer be hampered by the difficulties occasioned by high transportation costs from its Ontario plants.

Molson's situation also places it in the position of being an increasingly serious competitor of Canadian Breweries. The evidence is clearly to the effect that, during the period of the great loss of public favour suffered by National Breweries around 1951, Molson's sales and popularity in the Province of Quebec greatly increased. In 1952, it accounted for 54.7% of total sales in Quebec and 8.6% of total sales in Ontario, or an average of 28.5% of total sales in Ontario and Quebec taken together. Molson's is presently building a brewing plant in Toronto, which is expected to enter into production this year with an annual capacity of 250 thousand barrels. When one considers the question of transportation costs, and also the fact that, in 1952, Molson's was already operating at 93.8% of its capacity in Quebec, one realizes to what extent Molson's new Toronto brewery will strengthen that Company's position as a competitor of Canadian Breweries in both Ontario and Quebec.

In our opinion, even if the history of the development of Canadian Breweries Limited has shown this organization to be a constant threat to competition and to the freedom of the market, it now seems likely that this development has reached its limit in the Provinces of Ontario and Quebec and that the Company will no longer be able, pursuant to any unilateral design of its own, to eliminate competition or change the pattern of competition to its own standards and liking, as it did in the Province of Ontario between 1930 and 1953. In other words, if one is to judge the position of Canadian Breweries in relation to its remaining competitors, one cannot say that the mere continuation in existence of this Company is a constant threat to the public interest. Only an illegal agreement, arrangement or understanding between the three who are now competitors, viz., Canadian Breweries, Molson's and Labatt's, is likely to bring about a further elimination of competition. [We should not presume that any such illegal conduct will be resorted to, and the fact that such an illegal agreement would be needed in order to curtail competition is proof, in our opinion, of the real competitive influence presently exercised by these two strong rivals of Canadian Breweries. It is perhaps unnecessary to add that any amalgamation between Canadian Breweries and one of its principal competitors would create a very different situation.]

(c) Western Provinces

As far as control over the industry is concerned, the Commission is of the opinion that Canadian Breweries does not possess or exercise substantial control over the brewing industry in the Western Provinces of Canada.

By 1943, the Company decided to repeat in Western Canada the merger process which it had pursued so successfully in Ontario. As Mr. Taylor put it in his letter of April 26, 1943, to

J. A. McDougald, with respect to the Western Provinces:

"There are too many breweries in all of the provinces and there is a golden opportunity to repeat our Ontario performance. You will readily understand that there is a great advantage in being a truly national institution."

The whole process and development of Canadian Breweries' activities in Western Canada has been described in Chapter V of this report. It will suffice here to recall certain of the facts and data.

In 1952, and apparently at the time of the hearing in this inquiry, there were six brewing establishments in Manitoba, five in Saskatchewan, five in Alberta and eleven in British Columbia, making a total of 27.

It will be recalled that by the time of the hearing a number of developments had occurred, at the instance of Mr. Taylor and for the benefit of Canadian Breweries. Brewers and Distillers of Vancouver Limited had been renamed Western Canada Breweries Limited. It already owned a brewery in Vancouver. It had acquired Western Breweries Limited and thereby had become owner of one brewery plant in Winnipeg (Drewrys, Manitoba Division), one in Saskatoon (Drewrys, Saskatchewan Division), and one in Regina (Blue Label Brewery Limited, now called Carling's, Regina). It has also purchased a majority interest in a new small brewery located in Red Deer, Alberta (Red Deer Brewing Company Limited). Finally, it had obtained control of a small Winnipeg Brewery, Grant's Brewery Limited, in association with Mr. Taylor and certain interested parties.

In the year 1952, the breweries owned by Western Canada Breweries Limited in Manitoba, Saskatchewan and British Columbia (including Grant's Brewery Limited) accounted for 31.5% of the brewing capacity, 34.1% of the production and 34.4% of the actual sales in those three provinces. Its highest percentages were obtained in Manitoba, where Western Canada Breweries accounted in that year for 37.5% of capacity, 38.2% of production and 38.6% of sales.

It must be noted here that, notwithstanding the fact that Western Canada Breweries had been promoted by Canadian Breweries through the activities of Mr. Taylor, and although it seems that Mr. Taylor and his associates have had considerable influence on the management of this Company, the holdings of Canadian Breweries therein were limited at the time of the hearing to 23.8% of the shares. At that time Canadian Breweries was by far the largest individual shareholder in the Company but not in financial control of the enterprise. A number of English shareholders, who apparently acted together, held 48% of the shares, giving them, in effect, voting control.

From the facts given above, it is clear that Western

Canada Breweries has a substantial number of competitors in the Western Provinces, whose aggregate business amounts to much more than 50% of the total business of the four provinces. Some of these have been quite unreceptive in their attitude toward merging with Canadian Breweries. On this point it is noted that, in the Province of Alberta, both Canadian Breweries and Western Canada Breweries Limited made a number of attempts over a period of years to obtain control of an established brewing plant in that province, but failed. Thus, repeated attempts were made to negotiate with Northwest Brewing Company Limited, of Edmonton, for the purchase of a block of shares which would have secured the control of that Brewery. Again, negotiations took place in 1950 with Calgary Brewing and Malting Company Limited, of Calgary. In both cases there was no success, with the result that neither Western Canada Breweries Limited nor Canadian Breweries had a brewing plant in Alberta. It was after these unsuccessful attempts to acquire control of an established brewery that Western Canada Breweries purchased a majority interest in a new Alberta brewing company, Red Deer Brewing Company Limited, of Red Deer, whose plant has only recently been completed, with an annual capacity of only 50 thousand barrels.

We are of the opinion that neither Western Canada Breweries nor Canadian Breweries, which holds only a minority interest in the former Company, is in control of the brewing industry in the four Western Provinces, but that, on the contrary, there is effective competition in this area. Apart from Canadian Breweries' long-range merger plans, there is one existing danger to competition which may be noted. This arises from the declared hope of Canadian Breweries Limited to persuade Western Canada Breweries, eventually, to replace its own brands of beer in all four provinces in Western Canada with those of Canadian Breweries, so that both Companies may profit by the expensive national advertising carried on by Canadian Breweries. This type of agreement is now possible under the new Trade Marks Act, which permits the licensing of trade marks, without actual transfer of the goodwill, which normally goes with the trade mark. Any attempts which may be made by Canadian Breweries Limited and Western Canada Breweries Limited to use this device as a pretext for agreeing on prices or otherwise restricting competition might well be against the public interest. However, that is not a matter with which the present report is concerned, and the possibility that at some future date any party or group of parties may enter into illegal activities does not alter our opinion that at the present time there is effective competition in the brewing industry in Western Canada.

(d) The Situation in Canada as a Whole

We have already stated that in our opinion Canadian Breweries does not control the brewing industry to the detriment and

and against the interest of the public in either the Maritime, the Central or the Western Provinces of Canada. Canadian Breweries alone accounts for less than 50% of the total capacity, production or sales in the country, and the figures for the years 1949 to 1952 establish that, although, if we include the figures for Western Canada Breweries as part of the total for Canadian Breweries, it did account for 50.5% of productive capacity in that period, it did not obtain a majority percentage of either production or sales. This indicates the important aggregate role played by the competitors of the Company throughout Canada as a whole. In discussing the situation with respect to provincial areas, we have described in some detail the nature and the extent of their competition.

We believe that, if the situation does not change materially and if Canadian Breweries Limited is not permitted to acquire from their owners any additional brewing companies and if, more particularly, it is not allowed to increase its interest, directly or indirectly, in Western Canada Breweries Limited, Canadian Breweries should not be considered a threat to the industry or a monopoly which is operating or is likely to operate to the detriment or against the interest of the public in Canada. We are not questioning here the Company's right to expand its operations anywhere in the ordinary way, by enlarging its own plants or building new ones. However, since the acquisition of ownership or control of an existing company necessarily involves the elimination of a competitor, and since Canadian Breweries is already in an immensely strong position in the Canadian brewing industry, we are of the opinion that if that Company should acquire any additional subsisting plants, or if it should complete control of such an important segment of the industry in Western Canada as is represented by Western Canada Breweries, the result might well be to upset the competitive situation throughout the country.

(e) External Operations of Canadian Breweries

In view of the reference to it contained in the Statement of Evidence and also of the argument made at the hearing, we discussed briefly, in Chapter VI the matter of the considerable development of Canadian Breweries in the United States of America and of its minor operations in the United Kingdom.

Since we have not found that the Company possesses or exercises either substantial or complete control of the brewing industry in Canada, we consider it unnecessary to deal more extensively in this report with the matter of the Company's operations outside Canada. We interpret our jurisdiction under Section 2(e)(ii) of the Combines Investigation Act as neither requiring nor authorizing us to inquire into the economic or social incidence of the activities of any company outside Canada, at least unless it is shown that these

activities are connected essentially with control of the industry within Canada or with operations in Canada which are detrimental to or likely to be against the interest of the public. In this case we have found no evidence which leads us to believe that the operations of the Company in the United States and in the United Kingdom have had any material bearing upon the merger program of the Company in Canada.

CHAPTER XII

FINDINGS OF FACT, CONCLUSIONS AS TO PUBLIC INTEREST AND REMEDIES

1. Findings of Fact

- (a) From the date of its incorporation in 1930, Canadian Breweries Limited has pursued a deliberate planned program designed to place the Company in a dominant controlling position in the brewing industry.
- (b) Until about 1943 the major activities of the Company in Canada were confined to Ontario. In that province the plan was to achieve dominance by acquiring practically all the breweries in the populous southern part of the province and closing down many of those acquired. Pursuant to the plan, by the year 1953 the Company had acquired 23 brewing companies in Ontario and had closed 12 of them, concentrating all production in those remaining.
- (c) In 1953, apart from Canadian Breweries subsidiaries, there were only two brewing companies producing beer in the whole of Southern Ontario, viz., Labatt's, a large strong company, and the small Formosa Company. In addition, Molson's of Montreal was in competition with Canadian Breweries by means of exports to Ontario from its Montreal plant. Molson's is now constructing a large new plant at Toronto.
- (d) In 1943 Canadian Breweries raised its sights and began to take steps designed to repeat in the four provinces of Western Canada, the acquisition and closure program it had successfully pursued in Ontario. At the time of the hearing its declared program was far from complete. It had arranged the merger of two brewing organizations under the new name of Western Canada Breweries Limited. The new Company owned breweries in Manitoba, Saskatchewan and British Columbia, had purchased a controlling interest in a small new brewery at Red Deer, Alberta, and in conjunction with Mr. Taylor and his associates had secured control of another small brewery in Manitoba. However, Canadian Breweries, on whose behalf these developments had been undertaken, had only succeeded in acquiring ownership of 23.8% of the shares of Western Canada Breweries Limited, voting control of which still vested in a

group of English shareholders who held 48% of the shares. The influence of Canadian Breweries in the management of Western Canada Breweries Limited appears to have been greater than its shareholding might indicate, but the evidence did not satisfy us that it had secured control in a practical sense. Canadian Breweries was by that time by far the largest individual shareholder of Western Canada shares.

- (e) A substantial number of other breweries operate in the four Western Provinces, not controlled in any way by Canadian Breweries. The five breweries owned or controlled by Western Canada Breweries at that time had in 1952 approximately one-third of the capacity, production and sales for the Provinces of Manitoba, Saskatchewan and British Columbia, and had no producing brewery in Alberta.
- (f) In March 1952 Canadian Breweries, for all practical purposes, acquired control of National Breweries Limited, and became an important producer in the Province of Quebec. The Company was renamed Dow Brewery Limited. It operates under its own Board of Directors but for the purpose of this report must be regarded as a producing brewery of Canadian Breweries.
- (g) Canadian Breweries in recent years has had considerably more than half the capacity, production and sales of beer in Ontario.
- (h) Even with the acquisition of National Breweries (now Dow), Canadian Breweries still has substantially less than half the business in Quebec.
- (i) In both Ontario and Quebec strong competition is offered to Canadian Breweries by Molson's and Labatt's, more particularly by Molson's in Quebec and by Labatt's in Ontario. This competition should be intensified by reason of a large Molson's plant now under construction in Toronto and a large Labatt's plant being constructed at Montreal.
- (j) The Commission finds no evidence that the activities pursued by Canadian Breweries in the United States and the United Kingdom have had any influence upon the merger and acquisition program carried on in Canada.
- (k) Mr. E. P. Taylor's connection with the activities of Canadian Breweries that have been discussed in this report, as principal organizer, President and General Manager, and since 1944 as Chairman of the Board of Directors, has been described in earlier chapters of this report. He was undoubtedly the moving spirit in the organization and development of the Company.

2. Conclusions as to the Public Interest

The Commission, in seeking to determine the effect of the foregoing facts and activities on the public interest, has studied the matter, first from the point of view of the many successive acquisitions of brewing companies made by Canadian Breweries Limited in the course of the period between its incorporation and the year 1953, and then from the standpoint of the industry position now enjoyed by that Company, both in Canada generally and within the several areas of Ontario, Quebec and Western Canada, in order to ascertain whether this position is one of substantial or complete control of the industry, to the detriment of the public.

(a) Acquisitions Effected

The Commission's findings on the first point have been stated and discussed in detail in Section 2 of Chapter X of this report.

In substance, it is the opinion of the Commission:

- (i) THAT the various acquisitions of rival brewing companies effected by Canadian Breweries in the course of the period under study were made for the purpose of carrying out a deliberate plan for the closing, selling, or dismantling of a great number of these breweries after their acquisition, and the concentration of all capacity and production in a few selected large plants, the whole designed to eliminate competition, and obtain a position of dominant control of the industry, first within the Province of Ontario, and later within Quebec and the Western Provinces;
- (ii) THAT, both because of the purpose sought to be achieved and because of the methods employed for achieving them, these successive mergers were objectionable;
- (iii) THAT, by reason of this planned program and the consequent arbitrary elimination of competition, the consumer public was deprived of the benefits which otherwise might have been expected to flow from the normal interplay of competitive factors in the market, more particularly from the competitive activities of the breweries thus artificially removed from the market;
- (iv) THAT, as a result of the activities disclosed in this inquiry, the public has been and still is deprived of opportunity to choose from a wide and diversified range of brands, types and qualities of beer, the number of brands

acquired in Ontario having been reduced deliberately by the Company from some 150 to 9 only;

- (v) THAT, generally, the merger and closure activities pursued by Canadian Breweries Limited throughout that period were monopolistic in their nature and were not in the public interest.

(b) Situation with Respect to Control

The Commission's findings on the second point mentioned above in relation to public interest have been stated and discussed in detail in Chapter XI of this report.

In substance, it is the opinion of the Commission:

- (i) THAT, in view of the present pattern of the industry in the country, and notwithstanding the monopolistic purpose which it has sought to achieve ever since its incorporation, Canadian Breweries Limited is not today in either substantial or complete control of the brewing industry, either throughout Canada or throughout any important area or district in Canada, to the detriment and against the interest of the public;
- (ii) THAT, in the Maritime Provinces, it has made no attempt to attain a position of dominance in the industry;
- (iii) THAT, in Ontario and Quebec, it is faced with strong and increasing competition from two large brewing enterprises, John Labatt's Limited and Molson's Brewery;
- (iv) THAT, neither in the Provinces of Ontario and Quebec, nor in the Western Provinces, nor in Canada generally, is Canadian Breweries in a position to dominate the beer market. It does not possess the power to dictate prices or eliminate competition, except with the voluntary and illegal agreement of its rivals.

3. Suggested Remedies

We have seen that, although the original intent of Canadian Breweries was to seek domination and control of the industry, first in Ontario and then in Quebec and in the Western Provinces, the Company has not succeeded in securing control of the market and that sufficient competition exists to justify this conclusion. We have noted, however, that, if Canadian Breweries

should be allowed to pursue any further, especially in Western Canada, the course of action which has hitherto characterized its activities and has been the means by which its great expansion has been achieved, there would be danger that such a condition of domination and control might ultimately be attained.

We have further indicated, on the other hand, that if the pattern of the industry and the relative distribution of capacity do not undergo substantial change, private regulation of price and elimination of other aspects of competition can be achieved by Canadian Breweries only through illegal agreements with its competitors.

Bearing in mind the past history of Canadian Breweries and its latest five year plan, as yet not fully implemented, the conclusions we have just stated lead us to suggest that for the purpose of avoiding any further developments detrimental to the public, the necessary steps might be taken:

- (i) To prevent Canadian Breweries Limited from expanding further by acquiring, directly or indirectly, either the assets or a controlling interest in the capital stock of any of its competitors in Canada;
- (ii) To prevent Canadian Breweries Limited from acquiring, either directly or indirectly, any additional shares in the capital stock of Western Canada Breweries Limited;
- (iii) To prevent any officer, director or agent of Canadian Breweries Limited from becoming or continuing to be an officer or director of Western Canada Breweries Limited;
- (iv) To prevent Canadian Breweries Limited, its directors and officers from entering into any agreement, arrangement or understanding with any of its competitors in Canada for the purpose of regulating prices in the brewing industry, or for the purpose of preventing or lessening competition in the brewing industry in Canada or in any area or district thereof.

In view of the conclusions we have expressed as to the competitive strength and current expansion of the two chief competitors of Canadian Breweries Limited, in Ontario and Quebec, we believe there is no occasion at this time to consider such a step as the division of the Canadian Breweries organization into several units owned and operated independently of each other. In our opinion, as already stated, there is effective competition in the industry. In the light of the new plants now being built or enlarged by all three of these Companies, it is to be expected that competition between them will become more rather than less keen. Any step of the kind in question might well result simply in weakening the position of Canadian Breweries and strengthening that of its competitors perhaps without any material public benefit.

(Sgd.) C. R. Smith

Chairman

(Sgd.) Guy Favreau

Member

Ottawa,
May 14, 1955.

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Business

Canada. Restrictive Trade
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Report concerning an alleged
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